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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~1882.~~ 120

JOHN A. ALLEN, ADMINISTRATOR OF THE ESTATE OF CHARLES J. LUND, DECEASED, PLAINTIFF IN ERROR,

vs.

THE CITY OF LOUISIANA.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED JANUARY 24, 1878.

SUPREME COURT OF THE UNITED STATES.

No. 383.

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1 UNITED STATES OF AMERICA:
Eastern District of Missouri, sct:

Be it remembered that heretofore, to wit, on the 12th day of February, A. D. 1875, there was filed in the office of the clerk of the circuit court of the United States for the eastern district of Missouri a certain petition, which said petition is in the words and figures following, to wit:

Petition.

In the circuit court of the United States for the eastern district of Missouri.

UNITED STATES OF AMERICA,
Eastern District of Missouri, sct:

The plaintiff, Charles J. Lund, who is a citizen of the State of Massachusetts, complains of the city of Louisiana, a municipal corporation who is a citizen of the State of Missouri, residing in the said eastern district of Missouri, of a plea that the said defendant, the said city of Louisiana, render to the plaintiff the sum of ten thousand dollars which the said defendant owes to and unjustly detains from the plaintiff, and the further sum of five thousand dollars damages for the detention of said debt, for that, heretofore, at the city of Louisiana, to wit, at the district aforesaid, the defendant by Wm. Parker, its mayor, and N. H. Griffith, its clerk of city council, made and delivered to the bearer, on October 2d, 1871, a certain note in writing commonly called an interest-warrant or coupon, whereby it acknowledged itself indebted to the bearer in the sum of eighty dollars, being interest due January 1st, 1873, on railroad bond No. 50, and thereby directed its treasurer to pay said sum of money to bearer when due, which said warrant is held and owned by plaintiff and filed herewith, and so being the owner thereof plaintiff presented said warrant, when due, to said treasurer and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there refused and the same remains wholly unpaid, and plaintiff prays judgment for said sum of money and interest thereon, being part of the sum above demanded.

2 2. And for another cause of action the plaintiff saith that heretofore, to wit, October 2, 1871, at said district, the defendant by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note in writing, commonly called an interest-warrant or coupon, whereby it acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1873, on railroad bond No. 51, and thereby directed its treasurer to pay said last-mentioned sum of money to bearer when due, which last named warrant is held and owned by plaintiff and filed herewith. That so being the owner thereof plaintiff presented said warrant, when due, to said treasurer and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused and the same remains wholly unpaid, and plaintiff prays judgment for said last mentioned sum of money and interest thereon, part of the debt above demanded.

3. And for another cause of action the plaintiff saith that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note in writing, commonly called an interest.

warrant or coupon, whereby it acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1874, on railroad bond No. 51, and thereby directed its treasurer to pay said last mentioned sum of money to bearer when due, which last named warrant is held and owned by plaintiff and filed herewith. That so being *being* the owner thereof, plaintiff presented said warrant, when due, to said treasurer and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused and the same remains wholly unpaid, and plaintiff prays judgment for said last mentioned sum of money and interest thereon, part of the sum above demanded.

And for another cause of action the plaintiff saith that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note in writing, commonly called an interest-

warrant or coupon, whereby it acknowledged itself to the
3 bearer in the further sum of eighty dollars, being interest due January 1, 1873, on railroad bond No. 52, and thereby directed its treasurer to pay said last mentioned sum of money to bearer when due, which last named warrant is held and owned by plaintiff and filed herewith. That so being the owner thereof, plaintiff presented said warrant, when due to said treasurer and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused and the same remains wholly unpaid, and plaintiff prays judgment for said last mentioned sum of money and interest thereon, part of the debt above demanded.

5. And for another cause of action the plaintiff saith that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note in writing, commonly called an interest-warrant or coupon, whereby it acknowledged itself to the bearer in the further sum of eighty dollars, being interest due January 1, 1874, on railroad bond No. 52, and thereby directed its treasurer to pay said last mentioned sum of money to bearer when due, which last named warrant is held and owned by plaintiff and filed herewith. That so being the owner thereof, plaintiff presented said warrant, when due, to said treasurer and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused and the same remains wholly unpaid, and plaintiff prays judgment for said last mentioned sum of money and interest thereon, part of the debt above demanded.

6. And for another cause of action the plaintiff saith that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note in writing, commonly called an interest-warrant or coupon, whereby its acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1873, on railroad bond No. 53, and thereby directed its treasurer to pay said last mentioned sum of money to bearer when due, which last named warrant is held and owned by plaintiff and filed herewith. That

so being the owner thereof, plaintiff presented said warrant, when
4 due, to said treasurer and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused and the same remains wholly unpaid, and plaintiff prays judgment for said last mentioned sum of money and interest thereon, part of the debt above demanded.

7. And for another cause of action the plaintiff saith that heretofore,

to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note in writing, commonly called an interest warrant or coupon, whereby it acknowledges itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1874, on railroad bond No. 53, and thereby directed its treasurer to pay said last mentioned sum of money to bearer when due, which last named warrant is held and owned by plaintiff and filed herewith. That so being the owner thereof, plaintiff presented said warrant, when due, to said treasurer and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused and the same remains wholly unpaid, and plaintiff prays judgment for said last mentioned sum of money and interest thereon, part of the debt above demanded.

8. And for another cause of action the plaintiff saith that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note in writing, commonly called an interest-warrant or coupon, whereby it acknowledged itself to the bearer in the further sum of eighty dollars, being interest due January 1, 1873, on railroad bond No. 54, and thereby directed its treasurer to pay said last mentioned sum of money to bearer when due, which last named warrant is held and owned by plaintiff and filed herewith. That so being the owner thereof, plaintiff presented said warrant, when due, to said treasurer and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused and the same remains wholly unpaid, and plaintiff prays judgment for said last mentioned sum of money and interest thereon, part of the debt above demanded.

9. And for another cause of action the plaintiff saith that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note in writing, commonly called an interest-warrant or coupon, whereby it acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1874, on railroad bond No. 54, and thereby directed its treasurer to pay said last mentioned sum of money to bearer when due, which last named warrant is held and owned by plaintiff and filed herewith. That so being the owner thereof, plaintiff presented said warrant, when due, to said treasurer and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused and the same remains wholly unpaid, and plaintiff prays judgment for said last mentioned sum of money and interest thereon, part of the debt above demanded.

10. And for another cause of action the plaintiff saith that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note in writing, commonly called an interest warran or coupon, whereby it acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1873, on railroad bond No. 55, and thereby directed its treasurer to pay said last mentioned sum of money to bearer when due, which last named warrant is held and owned by plaintiff and filed herewith. That so being the owner thereof, plaintiff presented said warrant, when due, to said treasurer, and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused, and the

same remains wholly unpaid, and plaintiff prays judgment for said last mentioned sum of money and interest thereon, part of the debt above demanded.

11. And for another cause of action the plaintiff saith, that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note in writing, commonly called an interest warrant or coupon, whereby it acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1874, on railroad bond No. 55, and thereby directed its treasurer to pay said last mentioned sum of money to bearer when due, which last named warrant is held and owned by plaintiff and filed herewith. That so being the owner thereof plaintiff presented said warrant, when due, to said treasurer and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused, and the same remains wholly unpaid; and plaintiff prays judgment for said last mentioned sum of money and interest thereon, part of the debt above demanded.

12. And for another cause of action the plaintiff saith, that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note in writing, commonly called an interest warrant or coupon, whereby it acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1873, on railroad bond No. 56, and thereby directed its treasurer to pay said last mentioned sum of money to bearer when due, which last named warrant is held and owned by plaintiff and filed herewith. That so being the owner thereof plaintiff presented said warrant, when due, to said treasurer and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused, and the same remains wholly unpaid, and plaintiff prays judgment for said last-mentioned sum of money and interest thereon, part of the debt above demanded.

13. And for another cause of action the plaintiff saith, that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note in writing, commonly called an interest warrant or coupon, whereby it acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1874, on railroad bond No. 56, and thereby directed its treasurer to pay said last-mentioned sum of money to bearer when due, which last-named warrant is held and owned by plaintiff and filed herewith. That so being the owner thereof, plaintiff presented said warrant, when due, to said treasurer and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused, and the same remains wholly unpaid; and plaintiff prays judgment for said last-mentioned sum of money and interest thereon, part of the debt above demanded.

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14. And for another cause of action the plaintiff saith, that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note in writing, commonly called an interest warrant or coupon, whereby it acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1873, on railroad bond No. 57, and thereby directed its treasurer to pay said last-mentioned sum of money to bearer when

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due, which last-named warrant is held and owned by plaintiff and filed herewith. That so being the owner thereof, plaintiff presented said warrant, when due, to said treasurer, and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused, and the same remains wholly unpaid, and plaintiff prays judgment for said last-mentioned sum of money and interest thereon, part of the debt above demanded.

15. And for another cause of action the plaintiff saith, that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note in writing, commonly called an interest warrant or coupon, whereby it acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1874, on railroad bond No. 57, and thereby directed its treasurer to pay said last-mentioned sum of money to bearer when due, which last-named warrant is held and owned by plaintiff and filed herewith. That so being the owner thereof, plaintiff presented said warrant, when due, to said treasurer, and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused, and the same remains wholly unpaid; and plaintiff prays judgment for said last-mentioned sum of money and interest thereon, part of the debt above demanded.

16. And for another cause of action, the plaintiff saith, that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note in writing, commonly called an interest warrant or coupon, whereby it acknowledged itself to the bearer in the further sum of eighty dollars, being interest due January 1, 1873, on railroad bond No. 58, and thereby directed its
8 treasurer to pay said last-mentioned sum of money to bearer when due, which last-named warrant is held and owned by plaintiff and filed herewith. That so being the owner thereof, plaintiff presented said warrant, when due, to said treasurer and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused, and the same remains wholly unpaid; and plaintiff prays judgment for said last-mentioned sum of money and interest thereon, part of the debt above demanded.

17. And for another cause of action the plaintiff saith, that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note in writing, commonly called an interest warrant or coupon, whereby it acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1874, on railroad bond No. 58, and thereby directed its treasurer to pay said last mentioned sum of money to bearer when due, which last-named warrant is held and owned by plaintiff and filed herewith. That so being the owner thereof, plaintiff presented said warrant, when due, to said treasurer and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused, and the same remains wholly unpaid; and plaintiff prays judgment for said last-mentioned sum of money and interest thereon, part of the debt above demanded.

18. And for another cause of action plaintiff saith, that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note in writing, commonly called an inter-

est warrant or coupon, whereby it acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1873, on railroad bond No. 59, and thereby directed its treasurer to pay said last-mentioned sum of money to bearer when due, which last-named warrant is held and owned by plaintiff and filed herewith. That so being the owner thereof, plaintiff presented said warrant when due to said treasurer and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused, and the same remains wholly unpaid; and plaintiff prays judgment for said last-mentioned sum of money and interest thereon, part of the above debt demanded.

9 19. And for another cause of action the plaintiff saith, that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer its certain other note, in writing, commonly called an interest warrant or coupon, whereby it acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1874, on railroad bond No. 59, and thereby directed its treasurer to pay said last-mentioned sum of money to bearer when due, which last-named warrant is held and owned by plaintiff and filed herewith. That so being the owner thereof, plaintiff presented said warrant, when due, to said treasurer, and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused, and the same remains wholly unpaid; and plaintiff prays judgment for said last-mentioned sum of money and interest thereon, part of debt above demanded.

20. And for another cause of action the plaintiff saith that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note, in writing, commonly called an interest warrant or coupon, whereby it acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1873, on railroad bond No. 60, and thereby directed its treasurer to pay last-mentioned sum of money to bearer when due, which last-named warrant is held and owned by plaintiff and filed herewith. That so being the owner thereof, plaintiff presented said warrant, when due, to said treasurer and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused, and the same remains wholly unpaid; and plaintiff prays judgment for said last mentioned sum of money and interest thereon, part of debt above demanded.

21. And for another cause of action the plaintiff saith that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note, in writing, commonly called an interest warrant or coupon, whereby it acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1873, on railroad bond No. 61, and thereby directed its treas-

10 urer to pay said last-mentioned sum of money to bearer when due, which last-named warrant is held and owned by plaintiff and filed herewith. That so being the owner thereof, plaintiff presented said warrant, when due, to said treasurer and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused, and the same wholly unpaid; and plaintiff prays judgment for said last-mentioned sum of money and interest thereon, part of debt above demanded.

22. And for another cause of action the plaintiff saith that heretofore,

to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note, in writing, commonly called an interest warrant or coupon, whereby it acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1874, on railroad bond No. 61, and thereby directed its treasurer to pay said last-mentioned sum of money to bearer when due, which last-named warrant is held and owned by plaintiff and filed herewith. That so being the owner thereof, plaintiff presented said warrant, when due, to said treasurer and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused, and the same remains wholly unpaid; and plaintiff prays judgment for said last-mentioned sum of money and interest thereon, part of debt above demanded.

23. And for another cause of action the plaintiff saith that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note, in writing, commonly called an interest warrant or coupon, whereby it acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1873, on railroad bond No. 62, and thereby directed its treasurer to pay said last-mentioned sum of money to bearer when due, which last-named warrant is held and owned by plaintiff and filed herewith. That so being the owner thereof, plaintiff presented said warrant, when due, to said treasurer and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused, and the same remains wholly unpaid, and plaintiff prays judgment for said last-mentioned sum of money and interest thereon, part of debt above demanded.

11 24. And for another cause of action the plaintiff saith that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note, in writing, commonly called an interest warrant or coupon, whereby it acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1874, on railroad bond No. 62, and thereby directed its treasurer to pay said last-mentioned sum of money to bearer when due, which last-named warrant is held and owned by plaintiff and filed herewith. That so being the owner thereof, plaintiff presented said warrant, when due, to said treasurer and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused, and the same remains wholly unpaid, and plaintiff prays judgment for said last-mentioned sum of money and interest thereon, part of debt above demanded.

25. And for another cause of action the plaintiff saith that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to bearer a certain other note, in writing, commonly called an interest warrant or coupon, whereby it acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1873, on railroad bond No. 63, and thereby directed its treasurer to pay said last mentioned sum of money to bearer when due, which last-named warrant is held and owned by plaintiff and filed herewith. That so being the owner thereof, plaintiff presented said warrant, when due, to said treasurer and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused, and the

same remains wholly unpaid, and plaintiff prays judgment for said last-mentioned sum of money and interest thereon, part of debt above demanded.

26. And for another cause of action the plaintiff saith that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note, in writing, commonly called an interest warrant or coupon, whereby it acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1873, on railroad bond No. 64, and thereby directed its treasurer to pay
12 said last-mentioned sum of money to bearer when due, which last-named warrant is held and owned by plaintiff and filed herewith. That so being the owner thereof, plaintiff presented said warrant, when due, to said treasurer and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused, and the same remains wholly unpaid, and plaintiff prays judgment for said last-mentioned sum of money and interest thereon, part of debt above demanded.

27. And for another cause of action the plaintiff saith that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note, in writing, commonly called an interest warrant or coupon, whereby it acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1873, on railroad bond No. 65, and thereby directed its treasurer to pay said last-mentioned sum of money to bearer when due, which last-named warrant is held and owned by plaintiff and filed herewith. That so being the owner thereof, plaintiff presented said warrant, when due, to said treasurer and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused, and the same remains wholly unpaid, and plaintiff prays judgment for said last-mentioned sum of money and interest thereon, part of debt above demanded.

28. And for another cause of action the plaintiff saith, that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note, in writing, commonly called an interest warrant or coupon, whereby it acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1873, on railroad bond No. 66, and thereby directed its treasurer to pay said last-mentioned sum of money to bearer when due, which last-named warrant is held and owned by plaintiff and filed herewith. That so being the owner thereof, plaintiff presented said warrant, when due, to said treasurer and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused, and the same remains wholly unpaid, and plaintiff prays judgment for said last-mentioned sum of money and interest thereon, part of debt above demanded.

13 29. And for another cause of action the plaintiff saith, that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note in writing, commonly called an interest warrant or coupon, whereby it acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1873, on railroad bond No. 67, and thereby directed its treasurer to pay said last mentioned sum of money to bearer when due,

which last named warrant is held and owned by plaintiff and filed herewith. That so being the owner thereof, plaintiff presented said warrant, when due, to said treasurer and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused, and the same remains wholly unpaid; and plaintiff prays judgment for said last mentioned sum of money and interest thereon, part of the debt above mentioned.

30. And for another cause of action the plaintiff saith, that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note in writing, commonly called and interest warrant or coupon, whereby it acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1873, on railroad bond No. 68, and thereby directed its treasurer to pay said last mentioned sum of money to bearer when due, which last named warrant is held and owned by plaintiff and filed herewith. That so being the owner thereof, plaintiff presented said warrant, when due, to said treasurer and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused, and the same remains wholly unpaid; and plaintiff prays judgment for said last mentioned sum of money and interest thereon, part of debt above demanded.

31. And for another cause of action the plaintiff saith, that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note in writing, commonly called an interest warrant or coupon, whereby it acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1873, on railroad bond No. 69, and thereby directed its treasurer to pay said last mentioned sum of money to bearer when due, which last named warrant is held and owned by plaintiff and filed herewith. That so being the owner thereof, plaintiff presented said warrant, when due, to said treasurer and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused, and the same remains wholly unpaid; and plaintiff prays judgment for said last mentioned sum of money and interest thereon, part of debt above demanded.

32. And for another cause of action the plaintiff saith, that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note in writing, commonly called an interest warrant or coupon, whereby it acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1873, on railroad bond No. 70, and thereby directed its treasurer to pay said last mentioned sum of money to bearer when due, which last named warrant is held and owned by plaintiff and filed herewith. That so being the owner thereof, plaintiff presented said warrant, when due, to said treasurer and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused, and the same remains wholly unpaid; and plaintiff prays judgment for said last mentioned sum of money and interest thereon, part of debt above demanded.

33. And for another cause of action the plaintiff saith, that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note in writing, commonly called an interest

warrant or coupon, whereby it acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1873, on railroad bond No. 71, and thereby directed its treasurer to pay said last mentioned sum of money to bearer when due, which last named warrant is held and owned by plaintiff and filed herewith. That so being the owner thereof, plaintiff presented said warrant, when due, to said treasurer and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused, and the same remains wholly unpaid; and plaintiff prays judgment for said last mentioned sum of money and interest thereon, part of debt above demanded.

15 34. And for another cause of action the plaintiff saith, that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note in writing, commonly called an interest warrant or coupon, whereby it acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1873, on railroad bond No. 72, and thereby directed its treasurer to pay said last mentioned sum of money to bearer when due, which last named warrant is held and owned by plaintiff and filed herewith. That so being the owner thereof, plaintiff presented said warrant, when due, to said treasurer and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused, and the same remains wholly unpaid; and plaintiff prays judgment for said last mentioned sum of money and interest thereon, part of debt above demanded.

35. And for another cause of action the plaintiff saith, that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note in writing, commonly called an interest warrant or coupon, whereby it acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1873, on railroad bond No. 73, and thereby directed its treasurer to pay said last mentioned sum of money to bearer when due, which last named warrant is held and owned by plaintiff and filed herewith. That so being the owner thereof, plaintiff presented said warrant, when due, to said treasurer and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused, and the same remains wholly unpaid; and plaintiff prays judgment for said last mentioned sum of money and interest thereon, part of debt above demanded.

36. And for another cause of action the plaintiff saith, that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note in writing, commonly called an interest warrant or coupon, whereby it acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1873, on railroad bond No. 74, and thereby directed its treasurer

16 to pay said last mentioned sum of money to bearer when due, which last named warrant is held and owned by plaintiff and filed herewith. That so being the owner thereof, plaintiff presented said warrant, when due, to said treasurer and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused, and the same remains wholly unpaid; and plaintiff prays judgment for said last mentioned sum of money and interest thereon, part of debt above demanded.

37. And for another cause of action the plaintiff saith, that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note in writing, commonly called an interest warrant or coupon, whereby it acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1873, on railroad bond No. 75, and thereby directed its treasurer to pay said last mentioned sum of money to bearer when due, which last named warrant is held and owned by plaintiff and filed herewith. That so being the owner thereof, plaintiff presented said warrant, when due, to said treasurer and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused, and the same remains wholly unpaid; and plaintiff prays judgment for said last mentioned sum of money and interest thereon, part of debt above demanded.

38. And for another cause of action the plaintiff saith, that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note, in writing, commonly called an interest warrant or coupon, whereby it acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1873, on railroad bond No. 76, and thereby directed its treasurer to pay said last mentioned sum of money to bearer when due, which last named warrant is held and owned by plaintiff and filed herewith. That so being the owner thereof, plaintiff presented said warrant, when due, to said treasurer and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused, and the same remains wholly unpaid; and plaintiff prays judgment for said last mentioned sum of money and interest thereon, part of debt above demanded.

17 39. And for another cause of action the plaintiff saith, that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note in writing, commonly called an interest warrant or coupon, whereby it acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1873, on railroad bond No. 77, and thereby directed its treasurer to pay said last mentioned sum of money to bearer when due, which last named warrant is held and owned by plaintiff and filed herewith. That, so being the owner thereof, plaintiff presented said warrant when due to said treasurer and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused, and the same remains wholly unpaid; and plaintiff prays judgment for said last mentioned sum of money, and interest thereon, part of debt above demanded.

40. And for another cause of action the plaintiff saith, that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note in writing, commonly called an interest warrant or coupon, whereby it acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1873, on railroad bond No. 78, and thereby directed its treasurer to pay said last mentioned sum of money to bearer when due, which last named warrant is held and owned by plaintiff and filed herewith. That, so being the owner thereof, plaintiff presented said warrant when due to said treasurer and demanded payment thereof, to wit, at the district

aforesaid; that payment was then and there wholly refused, and the same remains wholly unpaid; and plaintiff prays judgment for said last mentioned sum of money, and interest thereon, part of debt above demanded.

41. And for another cause of action the plaintiff saith, that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note in writing, commonly called an interest warrant or coupon, whereby it acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1873, on railroad bond No. 79, and thereby directed its
18 treasurer to pay said last mentioned sum of money to bearer when due, which last named warrant is held and owned by plaintiff, and filed herewith. That, so being the owner thereof, plaintiff presented said warrant when due to said treasurer and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused, and the same remains wholly unpaid; and plaintiff prays judgment for said last mentioned sum of money, and interest thereon, part of debt above demanded.

42. And for another cause of action the plaintiff saith, that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note in writing, commonly called an interest warrant or coupon, whereby it acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1873, on railroad bond No. 80, and thereby directed its treasurer to pay said last mentioned sum of money to bearer when due, which last named warrant is held and owned by plaintiff and filed herewith. That, so being the owner thereof, plaintiff presented said warrant when due to said treasurer and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused, and the same remains wholly unpaid; and plaintiff prays judgment for said last mentioned sum of money, and interest thereon, part of debt above demanded.

43. And for another cause of action the plaintiff saith, that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note in writing, commonly called an interest warrant or coupon, whereby it acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1873, on railroad bond No. 81, and thereby directed its treasurer to pay said last mentioned sum of money to bearer when due, which last named warrant is held and owned by plaintiff and filed herewith. That, so being the owner thereof, plaintiff presented said warrant when due to said treasurer and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused, and the same remains wholly unpaid; and plaintiff prays judgment for said last mentioned sum of money, and interest thereon, part of the debt above demanded.

19 44. And for another cause of action the plaintiff saith, that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note in writing, commonly called an interest warrant or coupon, whereby it acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1873, on railroad bond No. 82, and thereby direct-

ed its treasurer to pay said last mentioned sum of money to bearer when due, which last named warrant is held and owned by plaintiff and filed herewith. That, so being the owner thereof, plaintiff presented said warrant when due to said treasurer and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused, and the same remains wholly unpaid; and plaintiff prays judgment for said last mentioned sum of money, and interest thereon, part of the debt above demanded.

45. And for another cause of action the plaintiff saith, that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note in writing, commonly called an interest warrant or coupon, whereby it acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1874, on railroad bond No. 82, and thereby directed its treasurer to pay said last mentioned sum of money to bearer when due, which last named warrant is held and owned by plaintiff and filed herewith. That, so being the owner thereof, plaintiff presented said warrant when due to said treasurer and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused, and the same remains wholly unpaid; and plaintiff prays judgment for said last mentioned sum of money, and interest thereon, part of the debt above demanded.

46. And for another cause of action the plaintiff saith, that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note in writing, commonly called an interest warrant or coupon, whereby it acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1873, on railroad bond No. 83, and thereby directed its treasurer to pay said last mentioned sum of money to bearer when due, which last named warrant is held and owned by plaintiff and filed herewith. That, so being the owner thereof, plaintiff presented said warrant when due to said treasurer and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused, and the same remains wholly unpaid; and plaintiff prays judgment for said last mentioned sum of money, and interest thereon, part of the debt above demanded.

47. And for another cause of action the plaintiff saith, that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note in writing, commonly called an interest warrant or coupon, whereby it acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1874, on railroad bond No. 83, and thereby directed its treasurer to pay said last mentioned sum of money to bearer when due, which last named warrant is held and owned by plaintiff and filed herewith. That, so being the owner thereof, plaintiff presented said warrant when due to said treasurer and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused, and the same remains wholly unpaid; and plaintiff prays judgment for said last mentioned sum of money, and interest thereon, part of the debt above demanded.

48. And for another cause of action the plaintiff saith, that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council made and de-

livered to the bearer a certain other note in writing, commonly called an interest warrant or coupon, whereby it acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1873, on railroad bond No. 84, and thereby directed its treasurer to pay said last mentioned sum of money to bearer when due, which last named warrant is held and owned by plaintiff and filed herewith. That, so being the owner thereof, plaintiff presented said warrant when due to said treasurer and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused, and the same remains wholly unpaid; and plaintiff prays judgment for said last mentioned sum of money and interest thereon, part of the debt above demanded.

21 49. And for another cause of action the plaintiff saith that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note, in writing, commonly called and interest warrant or coupon, whereby it acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1874, on railroad bond No. 84, and thereby directed its treasurer to pay said last mentioned sum of money to bearer when due, which last named warrant is held and owned by plaintiff and filed herewith; that so being the owner thereof plaintiff presented said warrant, when due, to said treasurer and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused, and the same remains wholly unpaid; and prays judgment for said last mentioned sum of money and interest thereon, part of the debt above demanded.

50. And for another cause of action the plaintiff saith that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note, in writing, commonly called an interest warrant or coupon, whereby it acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1873, on railroad bond No. 85, and thereby directed its treasurer to pay said last mentioned sum of money to bearer when due, which last named warrant is held and owned by plaintiff and filed herewith; that so being the owner thereof plaintiff presented said warrant, when due, to said treasurer and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused, and the same remains wholly unpaid; and plaintiff prays judgment for said last mentioned sum of money and interest thereon, part of the debt above demanded.

51. And for another cause of action the plaintiff saith that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note, in writing, commonly called an interest warrant or coupon, whereby it acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1874, on railroad bond No. 85, and thereby directed

22 its treasurer to pay said last mentioned sum of money to bearer when due, which last named warrant is held and owned by plaintiff and filed herewith; that so being the owner thereof plaintiff presented said warrant, when due, to said treasurer and demanded payment thereof, to wit, at the district aforesaid: that payment was then and there wholly refused, and the same remains wholly unpaid; and plain-

tiff prays judgment for said last mentioned sum of money and interest thereon, part of the debt above demanded.

52. And for another cause of action the plaintiff saith that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note, in writing, commonly called an interest warrant or coupon, whereby it acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1873, on railroad bond No. 86, and thereby directed its treasurer to pay said last mentioned sum of money to bearer when , which last named warrant is held and owned by plaintiff and filed herewith; that so being the owner thereof plaintiff presented said warrant, when due, to said treasurer and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused, and the same remains wholly unpaid; and plaintiff prays judgment for said last mentioned sum of money and interest thereon, part of the debt above demanded.

53. And for another cause of action the plaintiff saith that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note, in writing, commonly called an interest warrant or coupon, whereby it acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1874, on railroad bond No. 86, and thereby directed its treasurer to pay said last mentioned sum of money to bearer when due, which last named warrant is held and owned by plaintiff and filed herewith; that so being the owner thereof plaintiff presented said warrant, when due, to said treasurer and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused, and the same remains wholly unpaid; and plaintiff prays judgment for said last mentioned sum of money and interest thereon, part of the debt above demanded.

23 54. And for another cause of action the plaintiff saith that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note, in writing, commonly called an interest warrant or coupon, whereby it acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1873, on railroad bond No. 87, and thereby directed its treasurer to pay said last mentioned sum of money to bearer when due, which last named warrant is held and owned by plaintiff and filed herewith; that so being the owner thereof plaintiff presented said warrant, when due, to said treasurer and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused, and the same remains wholly unpaid; and plaintiff prays judgment for said last mentioned sum of money and interest thereon, part of the debt above demanded.

55. And for another cause of action the plaintiff saith that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note, in writing, commonly called an interest warrant or coupon, whereby it acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1874, on railroad bond No. 87, and thereby directed its treasurer to pay said last mentioned sum of money to bearer when due, which last named warrant is held and owned by plaintiff and filed herewith;

that so being the owner thereof plaintiff presented said warrant, when due, to said treasurer and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused, and the same remains wholly unpaid; and plaintiff prays judgment for said last mentioned sum of money and interest thereon, part of the debt above demanded.

56. And for another cause of action the plaintiff states that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note, in writing, commonly called an interest warrant or coupon, whereby it acklowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1873, on railroad bond No. 88, and thereby directed its treasurer to pay said last mentioned sum of money to bearer when due, which last named warrant is held and owned by plaintiff and filed herewith; that so being the owner thereof plaintiff presented said warrant, when due, to said treasurer and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused, and the same remains wholly unpaid; and plaintiff prays judgment for said last mentioned sum of money and interest thereon, part of the debt above demanded.

57. And for another cause of action the plaintiff saith that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note, in writing, commonly called an interest warrant or coupon, whereby it acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1874, on railroad bond No. 88, and thereby directed its treasurer to pay said last mentioned sum of money to bearer when , which last named warrant is held and owned by plaintiff and filed herewith; that so being the owner thereof plaintiff presented said warrant, when due, to said treasurer and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused, and the same remains wholly unpaid; and plaintiff prays judgment for said last mentioned sum of money and interest thereon, part of the debt above demanded.

58. And for another cause of action the plaintiff saith that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note, in writing, commonly called an interest warrant or coupon, whereby it acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1873, on railroad bond No. 89, and thereby directed its treasurer to pay said last mentioned sum of money to bearer when due, which last named warrant is held and owned by plaintiff and filed herewith; that so being the owner thereof plaintiff presented said warrant, when due, to said treasurer and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused, and the same remains wholly unpaid; and plaintiff prays judgment for said last mentioned sum of money and interest thereon, part of the debt above demanded.

25 59. And for another cause of action the plaintiff saith, that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note in writing, commonly called an interest warrant or coupon, whereby it acknowledged itself

indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1874, on railroad bond No. 89, and thereby directed its treasurer to pay said last-mentioned sum of money to bearer when due, which last-named warrant is held and owned by plaintiff and filed herewith. That so being the owner thereof, plaintiff presented said warrant, when due, to said treasurer and demanded payment, to wit, at the district aforesaid; that payment was then and there wholly refused, and the same remains wholly unpaid; and plaintiff prays judgment for said last-mentioned sum of money and interest thereon, part of the debt above demanded.

60. And for another cause of action the plaintiff saith, that heretofore, to wit, October 2, 1871, at said distr ict, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its cler k of council, made and delivered to the bearer a certain other note, in w riting, commonly called an interest warrant or coupon, whereby it acknow ledged itself indebted to the bearer in the further sum of eighty dollars, be ing interest due January 1, 1873, on railroad bond No. 90, and thereby directed its treasurer to pay said last-mentioned sum of money to bearer when due, which last-named warrant is held and owned by plaintiff and filed herewith. That so being the owner thereof, plaintiff presented said warrant, when due, to said treasurer and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused, and the same remains wholly unpaid; and plaintiff prays judgment for said last mentioned sum of money and interest thereon, part of the debt above demanded.

61. And for another cause of action the plaintiff saith, that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note, in writing, commonly called an interest-warrant or coupon, whereby it acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1874, on railroad bond No. 90, and thereby directed
26 its treasurer to pay said last-mentioned sum of money to bearer when due, which last-named warrant is held and owned by plaintiff and filed herewith. That so being the owner thereof, plaintiff presented said warrant, when due, to said treasurer and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused, and the same remains wholly unpaid; and plaintiff prays judgment for said last-mentioned sum of money and interest thereon, part of the debt above demanded.

62. And for another cause of action the plaintiff saith, that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note, in writing, commonly called an interest warrant or coupon, whereby it acknowled ged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1873, on railroad bond No. 91, and thereby directed its treasurer to pay said last-mentioned sum of money to bearer when due, which last named warrant is held and owned by plaintiff and filed herewith. That so being the owner thereof, plaintiff presented said warrant, when due, to said treasurer and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused, and the same remains wholly unpaid; and plaintiff prays judgment for said last mentioned sum of money, and interest thereon, part of the debt above demanded.

63. And for another cause of action the plaintiff saith, that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note, in writing, commonly called an interest warrant or coupon, whereby it acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1874, on railroad bond No. 91, and thereby directed its treasurer to pay said last mentioned sum of money to bearer when due, which last named warrant is held and owned by plaintiff and filed herewith. That so being the owner thereof, plaintiff presented said warrant, when due, to said treasurer and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused, and the same remains wholly unpaid; and plaintiff prays judgment for said last mentioned sum of money, and interest thereon, part of the debt above demanded.

27 64. And for another cause of action the plaintiff saith, that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note, in writing, commonly called an interest warrant or coupon, whereby it acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1873, on railroad bond No. 92, and thereby directed its treasurer to pay said last mentioned sum of money to bearer when due, which last named warrant is held and owned by plaintiff and filed herewith. That so being the owner thereof, plaintiff presented said warrant, when due, to said treasurer and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused, and the same remains wholly unpaid; and plaintiff prays judgment for said last mentioned sum of money, and interest thereon, part of the debt above demanded.

65. And for another cause of action the plaintiff saith, that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note, in writing, commonly called an interest warrant or coupon, whereby it acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1874, on railroad bond No. 92, and thereby directed its treasurer to pay said last-mentioned sum of money to bearer when due, which last named warrant is held and owned by plaintiff and filed herewith. That so being the owner thereof, plaintiff presented said warrant, when due, to said treasurer and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused, and the same remains wholly unpaid; and plaintiff prays judgment for said last mentioned sum of money, and interest thereon, part of the debt above demanded.

66. And for another cause of action the plaintiff saith, that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note, in writing, commonly called an interest warrant or coupon, whereby it acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1873, on railroad bond No. 93, and thereby directed its treasurer to pay

28 said last-mentioned sum of money to bearer when due, which last named warrant is held and owned by plaintiff and filed herewith. That so being the owner thereof, plaintiff presented said warrant, when due, to said treasurer and demanded payment thereof, to wit, at

the district aforesaid; that payment was then and there wholly refused, and the same remains wholly unpaid; and plaintiff prays judgment for said last-mentioned sum of money, and interest thereon, part of the debt above demanded.

67. And for another cause of action the plaintiff saith, that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note, in writing, commonly called an interest warrant or coupon, whereby it acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1874, on railroad bond No. 93, and thereby directed its treasurer to pay said last-mentioned sum of money to bearer when due, which last named warrant is held and owned by plaintiff and filed herewith. That so being the owner thereof, plaintiff presented said warrant, when due, to said treasurer and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused, and the same remains wholly unpaid; and plaintiff prays judgment for said last mentioned sum of money, and interest thereon, part of the debt above demanded.

68. And for another cause of action the plaintiff saith, that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note, in writing, commonly called an interest warrant or coupon, whereby it acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1873, on railroad bond No. 94, and thereby directed its treasurer to pay said last-mentioned sum of money to bearer when due, which last named warrant is held and owned by plaintiff and filed herewith. That so being the owner thereof, plaintiff presented said warrant, when due, to said treasurer and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused, and the same remains wholly unpaid; and plaintiff prays judgment for said last mentioned sum of money, and interest thereon, part of the debt above demanded.

29 69. And for another cause of action the plaintiff saith, that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerkof council, made and delivered to the bearer a certain other note in writing, commonly called an interest warrant or coupon, whereby it acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1874, on railroad bond No. 94, and thereby directed its treasurer to pay said last-mentioned sum of money to bearer when due, which last-named warrant is held and owned by plaintiff and filed herewith; that so being the owner thereof, plaintiff presented said warrant when due to said treasurer and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused, and the same remains wholly unpaid; and plaintiff prays judgment for said last-mentioned sum of money and interest thereon, part of the debt above demanded.

70. And for another cause of action the plaintiff saith, that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note in writing, commonly called an interest warrant or coupon, whereby it acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1873, on railroad bond No. 95, and thereby directed its

treasurer to pay said last mentioned sum of money to bearer when due, which last-named warrant is held and owned by plaintiff, and filed herewith; that so being the owner thereof, plaintiff presented said warrant when due to said treasurer and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused, and the same remains wholly unpaid; and plaintiff prays judgment for said last-mentioned sum of money and interest thereon, part of the debt above demanded.

71. And for another cause of action the plaintiff saith, that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note in writing, commonly called an interest warrant or coupon, whereby it acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1874, on railroad bond No. 95, and thereby directed its treasu-
30 rer to pay said last-mentioned sum of money to bearer when due, which last-named warrant is held and owned by plaintiff and filed herewith; that so being the owner therereof, plaintiff presented said warrant when due to said treasurer and demanded payment thereof, to wit, at the district aforesaid; that payment was then and wholly refused, and the same remains wholly unpaid; and plaintiff prays judgment for said last-mentioned sum of money and interest thereon, part of the debt above demanded.

72. And for another cause of action the plaintiff saith, that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note in writing, commonly called an interest warrant or coupon, whereby it acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1873, on railroad bond No. 96, and thereby directed its treasurer to pay said last-mentioned sum of money to bearer when due, which last-named warrant is held and owned by plaintiff and filed herewith; that so being the owner thereof, plaintiff presented said warrant when due to said treasurer, and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused, and the same remains wholly unpaid; and plaintiff prays judgment for said last-mentioned sum of money, and interest thereon, part of the debt above demanded.

73. And for another cause of action the plaintiff saith, that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note in writing, commonly called an interest warrant or coupon, whereby it acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1874, on railroad bond No. 96, and thereby directed its treasurer to pay said last-mentioned sum of money to bearer, when due, which last-named warrant is held and owned by plaintiff and filed herewith; that so being the owner thereof, plaintiff presented said warrant when due to said treasurer, and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused, and the same remains wholly unpaid; and plaintiff prays judgment for said last-mentioned sum of money and interest thereon, part of the debt above demanded.

31 74. And for another cause of action the plaintiff saith, that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made

and delivered to the bearer a certain other note in writing, commonly called an interest warrant or coupon, whereby it acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1873, on railroad bond No. 97, and thereby directed its treasurer to pay said last-mentioned sum of money to bearer when due, which last-named warrant is held and owned by plaintiff and filed herewith; that so being the owner thereof, plaintiff presented said warrant when due to said treasurer and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused, and the same remains wholly unpaid; and plaintiff prays judgment for said last mentioned sum of money and interest thereon, part of the debt above demanded.

75. And for another cause of action the plaintiff saith, that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note in writing, commonly called an interest warrant or coupon, whereby it acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1874, on railroad bond No. 97, and thereby directed its treasurer to pay said last-mentioned sum of money to bearer when due, which last-named warrant is held and owned by plaintiff, and filed herewith; that so being the owner thereof, plaintiff presented said warrant when due to said treasurer and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused, and the same remains wholly unpaid; and plaintiff prays judgment for said last-mentioned sum of money and interest thereon, part of debt above demanded.

76. And for another cause of action the plaintiff saith, that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note in writing, commonly called an interest warrant or coupon, whereby it acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1873, on railroad bond No. 98, and thereby directed
32 its treasurer to pay said last-mentioned sum of money to bearer when due, which last-named warrant is held and owned by plaintiff, and filed herewith; that so being the owner thereof, plaintiff presented said warrant when due to said treasurer, and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused, and the same remains wholly unpaid; and plaintiff prays judgment for said last-mentioned sum of money and interest thereon, part of debt above demanded.

77. And for another cause of action the plaintiff saith, that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note in writing, commonly called an interest warrant or coupon, whereby it acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1874, on railroad bond No. 98, and thereby directed its treasurer to pay said last mentioned sum of money to bearer when due, which last named warrant is held and owned by plaintiff, and filed herewith; that so being the owner thereof, plaintiff presented said warrant when due to said treasurer, and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused, and the same remains wholly unpaid; and plaintiff prays judgment for said

last mentioned sum of money and interest thereon, part of debt above demanded.

78. And for another cause of action the plaintiff saith, that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note in writing, commonly called an interest warrant or coupon, whereby it acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1873, on railroad bond No. 99, and thereby directed its treasurer to pay said last-mentioned sum of money to bearer when due, which last-named warrant is held and owned by plaintiff and filed herewith; that so being the owner thereof, plaintiff presented said warrant when due to said treasurer and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused, and the same remains wholly unpaid; and plaintiff prays judgment for said last mentioned sum of money and interest thereon, part of debt above demanded.

33 79. And for another cause of action the plaintiff saith that heretofore, to wit, October 2, 1871, at said district, the defendant, by Wm. Parker, its mayor, and N. H. Griffith, its clerk of council, made and delivered to the bearer a certain other note in writing, commonly called an interest warrant or coupon, whereby it acknowledged itself indebted to the bearer in the further sum of eighty dollars, being interest due January 1, 1878, on railroad bond No. 99, and thereby directed its treasurer to pay said last mentioned sum of money to bearer when due, which last named warrant is held and owned by plaintiff and filed herewith. That so being the owner thereof, plaintiff presented said warrant when due to said treasurer and demanded payment thereof, to wit, at the district aforesaid; that payment was then and there wholly refused, and the same remains wholly unpaid; and plaintiff prays judgment for said last mentioned sum of money and interest thereon, part of the debt above demanded.

And the plaintiff states that said several sums of money and the interest upon them respectively, being part and parcel of the said sum of fifteen thousand dollars for debt and damages, remain wholly unpaid, & an action hath accrued to the plaintiff to have and recover the same from said defendant as aforesaid, and the plaintiff prays judgment therefor.

GLOVER & SHEPLEY,
Attorneys for the Plaintiff.

And afterwards, on said 12th day of February, 1875, the clerk of said court issued a summons, which is in words and figures following, to wit:

Summons.

In the circuit court of the United States, in and for said district.

UNITED STATES OF AMERICA,
Eastern District of Missouri, sct:

The President of the United States of America to the marshal of the United States in and for said district, greeting:

You are hereby commanded to summon the city of Louisiana, a municipal corporation, who is a citizen of the State of Missouri, that it be and appear before the honorable circuit court of the United
34 States in and for the eastern district of Missouri, on the first day

of the next term thereof, to be holden at the city of St. Louis, in and for said district, on the third Monday of March next, then and there to answer the complaint of Charles J. Lund, who is a citizen of the State of Massachusetts, as set forth in the petition filed in said court, on the twelfth day of February, A. D. eighteen hundred and seventy-five. Hereof fail not, and have you then and there this writ.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the twelfth day of February, A. D. eighteen hundred and seventy-five.

Issued at office, in the city of St. Louis, under the seal of said circuit court, the day and year last aforesaid.

[SEAL.] AUSTIN DRAKE, *Clerk*,
By A. C. GEISBERG, *Deputy*.

And endorsed on said writ is the marshal's return, in words and figures following, to wit:

Return.

UNITED STATES OF AMERICA,
Eastern District of Missouri, set:

Executed this writ by delivering a copy of the summons, together with a copy of the petition, to William Parker, mayor of the city of Louisiana, within the eastern district of Missouri, February 1, 1875.

C. A. NEWCOMB,
United States Marshal, Eastern District of Missouri,
By T. J. WISEMAN, *Deputy*.

And afterwards, at a regular term of the circuit court of the United States for the eastern district of Missouri, begun and holden on the third Monday of March, 1875, and on the 23d day of said month, the defendant files its answer to plaintiff's petition, which answer is in words and figures following, to wit:

Answer.

United States circuit court, eastern district of Missouri.

CHARLES J. LUND, PL'FF,
vs.
THE CITY OF LOUISIANA, DEF'T.

35 1. The defendant, for answer to the petition of plaintiff, and the several counts thereof, states that as to whether the said plaintiff is the holder and owner of the said several notes in writing commonly called interest warrants or coupons, set forth and described in the several counts of his petition, this defendant has no knowledge nor information thereof sufficient to enable it to form a belief.

2. And for further answer to the said petition and the several counts thereof, and for another and further defense herein, and to each and all of the counts of the said petition, defendant states that at and before the time stated in said petition, and before the pretended making of the notes or warrants or coupons mentioned, or any of them, defendant was a municipal corporation created by the act of the general assembly of the State of Missouri, approved March 12th, 1870, and entitled "An act to amend an act entitled 'An act to amend and reduce into one the

several acts incorporating the town of Louisiana, and to organize the same into a city, 'approved March 14th, 1849, and the several acts amendatory thereof, said acts when amended shall read as follows," which is here to the court shown, and by and from which act defendant possessed and derived the powers possessed by it. That the Quincy, Alton & St. Louis Railroad Company was and is a corporation created and organized by and under the laws of the State of Illinois, to which reference is here made, and which is to the court shown; that said railroad company existed only in said State of Illinois, and with the power, and only with the power, to construct, maintain and operate a railroad in said State of Illinois, and defendant avers that it had not by its charter, or said act of incorporation creating it, nor by any law of the State of Missouri, nor by any law whatever, any power or authority, nor had the mayor or clerk of the council or any other officers of defendant any
36 power or authority for it to subscribe for any capital stock in said Quincy, Alton and St. Louis Railroad Company, nor to make, execute, or deliver any bonds or notes, warrants or coupons of or for defendant therefor, or to said railroad company; that said notes commonly called interest warrants or coupons in each and all of the counts of said petition, were attached to, and purported to be for interest upon and constituted part of certain pretended bonds numbered from fifty (50) to ninety-nine) (99) inclusive, being the same pretended bonds mentioned in the several counts of said petition. That one William Parker, who was then mayor of defendant, and one N. H. Griffith, who was then the clerk of the city council of defendant, without any power or authority of law, wrongfully made a subscription in writing for stock of said railroad company of Illinois, in the name and pretending to be for and on the behalf of defendant, and thereupon, as such mayor and such clerk of said council, said Parker and said Griffith, without any power or authority of law, wrongfully made and executed in the name of, and pretending to be for and on behalf of defendant, said pretended bonds numbered as aforesaid, and said pretended notes, or interest warrants or coupons attached thereto, pretending to be for interest on such pretended bonds, for such pretended subscription for stock of said railroad company of Illinois, and for no other purpose or consideration, and defendant states that there was no power or authority in the charter of said city, nor in or by any law of Missouri, or by any law whatever, to said city, or to said Parker or said Griffith, nor to any officers of said city, to make such subscription for stock of said railroad company of Illinois, nor to make, execute or deliver bonds therefor or thereto, nor to make or execute said notes, warrants or coupons, and that the same was and are without any power or authority there-
37 for, and were and are utterly void, and defendant not liable therefor.

3rd. And for further answer to the said petition and the several counts thereof, this defendant says that the said notes in writing, commonly called interest warrants or coupons, described and set forth in the first and all the subsequent counts of said petition, from the first to the seventy-ninth, inclusive, were originally attached to and constituted a part of certain pretended railroad bonds, numbered from fifty (50) to ninety-nine (99), inclusive, and being *in* fifty in number in all, and being the same pretended railroad bonds referred to and numbered in the said several accounts of said petition, and as in said counts numbered, that said several pretended bonds, with the said pretended coupons thereto attached, and being the same coupons sued on in this case, were executed by William Parker, mayor of defendant, and N. H. Grif-

fith, clerk of the city council of said defendant, under the pretended authority of an invalid and pretended ordinance of the defendant, the said city of Louisiana, numbered 628, entitled "An ordinance in relation to subscription and contract with the Quincy, Alton and St. Louis Railroad Company," purporting to have been passed, approved and adopted, by the mayor and council of defendant on the 26th of September, 1871. That by the terms of said pretended ordinance it was provided or expressed amongst other things, that the mayor of defendant be authorized to subscribe, on behalf of the defendant, to the stock of the Quincy, Alton and St. Louis Railroad Company, a corporation created by the laws of the State of Illinois, and having power to have a railroad in said State of Illinois, and not elsewhere, and doing business in the State of Illinois, and authorized only to do business in the State of Illinois, and which said last-named corporation had no
38 power or authority under its charter, or under the law, to build, construct or operate a railroad, or to do any other business as a corporation, in the State of Missouri; that by the terms of said pretended ordinance it was expressed that said mayor was authorized to subscribe for fifty thousand dollars ($50,000) of the stock of said Quincy, Alton and St. Louis Railroad Company, and in payment of said subscription to issue the bonds of the defendant to the amount of fifty in number, and of the denomination of one thousand dollars each, to be dated October 2d, 1871, and to bear interest at the rate of eight per cent. per annum, payable annually, from the first day of January, A. D. 1872, with interest coupons thereto attached; and the principal of said pretended bonds to be paid twenty years from the date thereof, said bonds to be signed by the mayor, and countersigned by the clerk of said defendant; and defendant says, that under the pretended authority of said ordinance, the said William Parker, then mayor of defendant, did subscribe for said stock, and did sign said bonds with the interest coupons thereto attached, which were also countersigned by the said N. H. Griffith, clerk, and are the same coupons sued on in this case. Defendant says that said ordinance was wholly unauthorized by law, or by the charter of defendant, and was utterly null and void; that the said defendant is a municipal corporation created and established by a certain act of the general assembly of the State of Missouri, approved March 12th, 1870, and entitled "An act to amend an act entitled An act to amend and reduce into one the several acts incorporating the town of Louisiana, and to organize the same into a city, approved March 14, 1849, and the several acts amendatory thereof, said acts when amended
39 shall read as follows." Defendant says that the only authority given by said act of the general assembly last above referred to, to subscribe for stock in any railroad company, and to issue bonds in payment of said stock, is contained in the 8th and 9th sections of said act, which sections are hereby referred to, shown to the court, and made a part of this answer; that neither of said sections, nor does any part of said charter of defendant, authorize the said city to subscribe for stock in a foreign corporation; and further, that the provisions of said sections are unconstitutional and void, wherefore defendant says that the act of the said William Parker, mayor, in subscribing for said stock of the Quincy, Alton and St. Louis Railroad Company, was utterly void and without authority of law, and that the act of the said William Parker, mayor, in executing said bonds and coupons, as mayor of defendant, and of the said Griffith, clerk, in countersigning the same, were without any authority of any law of the State of Missouri, or of the charter of defendant, and that the defendant is not bound thereby,

and is not indebted to the plaintiff in any amount on account of said coupons sued on in this case or on any account whatever.

4. And for a further answer to the several counts of said petition, defendant says that the said coupons described and set forth in the several counts of said petition were originally attached to and constituted a part of certain pretended railroad bonds, numbered from fifty (50) to ninety-nine (99) inclusive, and being the same railroad bonds referred to and numbered in the said several counts of said petition; that said several bonds with the coupons thereto attached, and being the same coupons sued on in this case, were executed by William Parker,
40 mayor of defendant, and N. H. Griffith, clerk of the city council of said defendant, under the pretended authority of an ordinance of the city of Louisiana, which ordinance was passed by the mayor and common council of the said city, on the 26th day of September, 1871. That by the terms of said ordinance it was expressed that the mayor of the city of Louisiana be authorized to subscribe on behalf of said city to the stock of the Quincy, Alton and St. Louis Railroad Company, to the amount of fifty thousand dollars, and defendant avers that said Quincy, Alton & St. Louis Railroad Company was and is a corporation created by the laws of Illinois, and was, at the time of the passage of said ordinance, engaged in constructing a railroad from the city of Quincy, in the State of Illinois, to a point on the Mississippi River opposite the defendant; and for the purpose of paying for said subscription of stock, it was expressed in said ordinance that the mayor of said city of Louisiana was authorized to issue the bonds of the said city of Louisiana to the amount of fifty in number, of the denomination of one thousand dollars each, to be dated Oct. 2d, 1871, to bear interest at the rate of eight per cent. per annum, payable annually, from the 1st day of January, A. D. 1872, and with interest coupons thereto attached; the principal of said bonds to be paid to bearer twenty years from the date thereof, said bonds to be signed by the mayor and countersigned by the clerk of the city council of said city. Defendant further says, that on or about the 2d day of October, 1871, as under said ordinance, the said William Parker, mayor of said city of Louisiana, did subscribe for fifty thousand dollars of the stock of said railroad company, on behalf of said city, and did execute and sign said bonds with the interest coupons thereto attached, which were also countersigned
41 by the said N. A. Griffith, clerk, and are the same coupons sued on in this case. Defendant further says that by the terms of said ordinance of said city of Louisiana, and by the contract between the said city of Louisiana and the said Quincy, Alton and St. Louis Railroad Company, it was provided that when said bonds and coupons should be made and executed as aforesaid, they should be deposited by said mayor with Hugh Allen as trustee, and that said bonds and coupons should be held by said trustee in trust for the use and benefit of the Quincy, Alton & St. Louis Railroad Company, and should by said trustee be delivered to said Quincy, Alton & St. Louis Railroad Company, or to its order, in payment of said subscription, so soon as said Quincy, Alton & St. Louis Railroad should be built and operated from the city of Quincy, in the county of Adams, and State of Illinois, to a point on the east bank of the Mississippi River opposite the said city of Louisiana, and thence across said river by a bridge or transfer boat upon which passenger and freight cars shall be transferred into the city, and so soon as said railroad company should also erect a depot building in the said city of Louisiana, and build necessary main and side tracks for the transaction of the business of said railroad in said city of Louisi-

ana, or should erect a depot building in said city, jointly with the Louisiana and Missouri River Railroad Company, provided that the erection of said depot building, either jointly or severally, nor the erecting or building of side or main tracks should not be a condition precedent to the delivery of said bonds to said railroad company by said trustee, unless said city should within sixty days from the passage of said ordinance, to wit, from the 21st of September, 1871, grant to said Quincy, Alton and St. Louis Railroad Company suitable and convenient grounds
42 upon which to erect said depot building, together with grounds for main and one or more side tracks necessary for the transaction of the business of said railroad in said city, together with all necessary rights of way over and across the grounds belonging to said city fronting upon the Mississippi River, and commonly known as the levee, for the purpose of building and operating their railroad over and across the same; and it was further provided by said ordinance and agreed between said defendant and the said railroad company, that the said trustee should not deliver said bonds and coupons to said railroad company until it should have complied with the terms and conditions above set forth, and that the within obligation of said trustee should be taken to that effect, which was done, and the bonds delivered to said trustee. Nevertheless defendant says that said terms and conditions were never complied with on the part of said railroad company; that said railroad was never built or operated across said river by bridge or transfer boat, upon which passenger and freight cars were transferred into said defendant; that said railroad company never built said necessary main tracks or side tracks for the transaction of the business of said railroad company in said defendant, nor was any connection of said railroad ever made with the defendant, although the said defendant did, within sixty days from the passage of said ordinance, grant to said railroad company suitable and convenient grounds upon which to erect said depot building, and grounds for main and side tracks necessary for the transaction of the business of said railroad in said defendant, together with all necessary right of way over and across the grounds belonging to said city fronting upon the Mississippi River, and commonly known as the levee, for the purpose of building and operating their railroad across the same, of all of which the said plaintiff had full notice as well
43 as of the terms of said contract, and the provisions of said ordinance as above set forth, and defendant says by some means to this defendant unknown, and without the knowledge or consent of the said trustee, the said bonds and coupons were fraudulently purloined from the said trustee, and delivered without his authority, or the authority of this defendant, to the said railroad company, of all of which the said plaintiff had notice at and before the time when he became the holder of the same. Wherefore the defendant asks to be hence dismissed with costs.

SHARP & BROADHEAD,
FAGG, DYER & BIGGS,
For Defendant.

And afterwards, to wit, on the 26th day of November, 1875, the plaintiff, by leave of court, filed his replication to the defendant's answer, which replication is in words and figures following, to wit:

Replication.

In the circuit court of the United States, eastern district of Missouri.

CHARLES J. LUND, PLAINTIFF,
vs.
THE CITY OF LOUISIANA, DEFENDANT.

1ST REPLY. And now at this day comes the plaintiff, Charles J. Lund, and for reply to the 2nd answer of said defendant to the petition of the plaintiff states that it is not true that said Quincy, Alton and St. Louis Railroad existed only as a corporation in the State of Illinois, and avers that said Quincy, Alton and St. Louis Railroad had power and authority under the laws of Missouri to make the contracts sued upon in this cause, and did make the same, and power and authority under the laws of Missouri to build and operate its railroad across the Mississippi River from a point in the State of Illinois opposite the said city of Louisiana, by bridge or transfer boat, on which passengers and freight cars
44 should be transferred into said city, and to erect a depot building in said city of Louisiana, and to build necessary main tracks or side tracks in said city for the transaction of the business, and avers that said city of Louisiana had, by its charter and the laws of Missouri, power and authority to subscribe to the capital stock of said railroad company for the purpose of securing to said city a connection with the said Quincy, Alton and St. Louis Railroad Company's road by means of a bridge, transfer boat, depot and tracks, as above mentioned, and to pay such subscription in the bonds and coupons of said city, and said defendant has repeatedly dealt with and recognized said railroad company as a corporation of Missouri; and the plaintiff states that heretofore, to wit, on the 26th day of September, 1871, it was agreed between the said Quincy, Alton, St. Louis Railroad Company and the said City of Louisiana, defendant herein, that if said city would subscribe fifty thousand dollars to the capital stock of said railroad company, payable in bonds of said city, the said Quincy, Alton and St. Louis Railroad Company would connect with the said city in manner and form as was provided by an ordinance No. 628, passed by the city council of said city, on the day and year last aforesaid—that is to say, in pursuance to said agreement between said city and said railroad company, the said city passed an ordinance whereby it was directed that the mayor of said city should make subscription for said city of Louisiana to the capital stock of said railroad company of shares in the same equal in amount to fifty thousand dollars, payable in the bonds of said city, with coupons in the usual form for the interest accruing on said bonds, to be thereto respectively attached, to be signed by the mayor, and countersigned by the clerk of said city, said bonds to be in the sum of one thousand dollars each, and bear interest from date at eight per cent. per annum, payable annually, on the 1st day of January, in each year, commencing with Jan'y 1, 1873,
45 and to bear date October 2, 1871, and be payable to bearer twenty years thereafter; and it was further provided by said ordinance that said bonds should be delivered to said railroad company as soon as said Quincy, Alton and St. Louis Railroad Company's road should be built and operated from the city of Quincy, in the county of Adams, in the State of Illinois, to a point on the east bank of the Mississippi River, opposite the said city of Louisiana, and thence across said river by a bridge or transfer boat upon which passengers and freight cars should be transferred into said city, and should erect a

depot building in said city of Louisiana, and build necessary main tracks or side tracks for the transaction of the business of said railroad company in said city, or should erect a depot building in said city jointly with the Louisiana and Missouri River Railroad Company, provided that the erecting of said depot building, either jointly or severally, or the building or erecting main or side tracks should not be a condition precedent to the delivery of said bonds to said Quincy, Alton and St. Louis Railroad Company, unless said city should within 60 days from the passage of said ordinance grant to said Quincy, Alton and St. Louis Railroad Company suitable and convenient grounds on which to erect said depot building, together with grounds for main and one or more side tracks necessary for the transaction of the business of said Quincy, Alton and St. Louis Railroad Company in said city, together with all necessary right of way over and across the ground belonging to said city fronting upon the Mississippi River, and commonly known as the levee, for the purpose of building and operating their said railroad over and across the same. All of which, among other things in the said ordinance No. 628, of said city, filed with defendant's answer, will more fully appear, and the plaintiff states that the coupons on which this
46 suit is brought and the bonds mentioned in said coupons were issued by said defendant in conformity to said contract and agreement between the Quincy, Alton and St. Louis Railroad Company and defendant, and in performance of said contract and agreement on the part of the defendant, and this the plaintiff is ready to verify.

2ND REPLY.—And now at this day comes the plaintiff, and for reply to the 3rd answer of the defendant to the plaintiff's petition states it is not true that said ordinance No. 628 was invalid. It is not true said Quincy, Alton and St. Louis Railroad Company had no power to perform the terms, conditions of said ordinance; that said defendants repeatedly dealt with and recognized said Quincy, Alton and St. Louis Railroad Company as a corporation of Missouri. It is not true that said railroad company had no power to receive, or said city had no power to make the subscription mentioned in said ordinance. That in fact prior to the date of said ordinance it was agreed between the said railroad company, and said city, that if the said city of Louisiana would subscribe to the capital stock of said Quincy, Alton and St. Louis Railroad Company, fifty thousand dollars, payable as mentioned therein with interest, the said Quincy, Alton and St. Louis Railroad Company would build and operate their road from Quincy, Illinois, to a point on the east bank of the Mississippi River, thence across said river by a bridge or transfer boat upon which passenger and freight cars should be transferred into said city, and would erect a depot building in the said city, and would build necessary main or side tracks for transaction of the business of said railroad in said city; and the plaintiff states that the coupons sued on were taken from bonds issued by said city to said railroad company in consideration of said agreement as aforesaid between said city and said railroad company, and that the said railroad company fully and completely complied with all the conditions and terms
47 mentioned in the said ordinance No. 628, all which the plaintiff is ready to verify.

3RD REPLY.—And for reply to the 4th answer of the defendant to the plaintiff's petition, the plaintiff states it is true that in consideration that the St. Louis, Alton and Quincy Railroad Company had agreed with the said defendant to build and operate their railroad from Quincy, Illinois, to a point on the east bank of the Mississippi River opposite said city in Missouri, and thence across said river by a bridge or trans-

fer boat on which passengers and freight cars should be transferred into said city, and should also erect a depot building in said city and build necessary main tracks or side tracks for the transaction of said railroad company's business in said city, as mentioned in the said ordinance No. 628; the said ordinance was passed by the city council of said city in order secure a connection of said railroad with said city, and in conformity to said ordinance and said contract between said city and said railroad company said subscription was made, and bonds and coupons issued and delivered to said railroad company.

The plaintiff says it is not true that the terms and conditions of said ordinance and said contract were never complied with by said railroad company as mentioned in said 4th answer; on the contrary, said railroad company, in accordance with said ordinance and contract, built and operated their said railroad from Quincy, Illinois, to a point on the east bank of said river opposite said city in Missouri, and thence across said river by transfer boat & bridge on which passenger and freight cars were transferred into said city, and also erected a depot building in said city and built all necessary tracks for the transaction of its business in said city, all of which was done in accordance with said contract. The plaintiff says it is not true that said city within 60 days from the passage of said ordinance granted to said railroad company the grounds
48 mentioned therein on which to erect said depot building and main or side tracks, or granted the right of way mentioned therein, all of which the plaintiff is ready to verify.

4TH REPLY.—And for a further reply to the said answers of the defendant numbered 2, 3, and 4, the plaintiff says that he is an innocent purchaser of all and each of the several coupons mentioned in his petition, in the market for value in the ordinary course of business, without knowledge or notice of any of the matters or things mentioned in all or any of said answers, or of any defence or defect or objections to any one of said coupons.

GLOVER & SHEPLEY,
For Plaintiff.

And afterwards, at an adjourned day of the March term, 1876, of said circuit court, held on the 26th day of June, 1876, the following proceedings were had in said case, to wit:

Death of Pl'ff suggested, &c.

CHARLES J. LUND, PLAINTIFF,
vs.
CITY OF LOUISIANA, DEFENDANT.

And now on this day come Messrs. Glover & Shepley, attorneys for the plaintiff in this cause, and suggest the death of said plaintiff, Charles J. Lund, and pray that this suit may be revived in the name of John A. Allen, administrator of the estate of said Charles J. Lund, deceased, thereupon it is ordered by the court that this suit be revived and progress in the name of John A. Allen, as administrator of the estate of Charles J. Lund, original plaintiff herein.

And afterwards, at a regular term of said circuit court begun and holden on the third Monday, the 18th day of September, 1876, the following further proceedings were had in said cause on the 28th day of October, 1876, to wit:

Judgment.

JOHN A. ALLEN, ADMINISTRATOR OF THE ESTATE of Charles J. Lund, deceased plaintiff,
49 *vs.*
THE CITY OF LOUISIANA, DEFENDANT.

Now come the said parties, by their attorneys, the plaintiff by Messrs. Glover & Shepley, and the defendant by Messrs. James O. Broadhead and David P. Dyer, and this cause being regularly called for trial, and the parties being ready, the same is submitted to the court for trial, a stipulation having been filed waiving a jury, upon the pleadings, proofs, and argument of counsel; on consideration whereof, and being fully advised in the premises, the court finds the issues for the defendant.

It is therefore now considered by the court that the plaintiff, John A. Allen, administrator of the estate of Charles J. Lund, deceased, take nothing by his writ herein; that the defendant, the City of Louisiana, go hence without day, and have and recover against said plaintiff the costs in this behalf expended and have thereof execution.

And afterwards, at the term last aforesaid of said circuit court, and on the 6th day of November, 1876, the plaintiff filed his bill of exceptions, which is in words and figures following, to wit:

Bill of exceptions.

In the circuit court of the United States for the eastern district of Missouri. September term, 1876.

JOHN A. ALLEN, ADM'R OF CHARLES J. LUND, plaintiff,
v.
THE CITY OF LOUISIANA, DEFENDANT.

Be it remembered that the parties waived a jury, and that this cause was submitted to the court. The plaintiff, to sustain the issues on his part, introduced evidence tending to show that the plaintiff was the owner of the coupons in suit, and that his intestate decedent purchased them for value, without notice of any defect in objection against the validity of any one of them; that the city of Louisiana passed the ordinance No. 621, which is as follows:

Ordinance No. 621.

An ordinance entitled "An ordinance authorizing an election
50 to be held in the city of Louisiana for a subscription of stock in certain railroads," as follows:

Be it ordained by the city council of Louisiana, as follows:

SEC. 1st. There shall be an election held at the several places in each ward for the holding general election in the city of Louisiana on the 5th day of September, 1871, on the proposition to take stock in the Clarksville and Western Railroad Company, or in the Quincy, Alton and St. Louis Railroad Company; provided, the said Quincy, Alton and St. Louis Railroad Co. shall cross the Mississippi River and make its southern terminus within the corporate limits of the said city of Louisiana at

such place as may be agreed upon by the officers of said Quincy, Alton and St. Louis Company and the city council of Louisiana, to an amount not to exceed fifty thousand dollars ($50,000); said election to be conducted by the same judges and at the same places as the general election held on the Tuesday after the first Monday in March, 1871, and the returns to be made and certified to the city council in the same manner as that of any general election.

SEC. 2d. Said subscription of stock, whether made to the Clarksville and Western Railroad Company or Quincy, Alton and St. Louis Company, said stock be paid in the corporate bonds of the city of Louisiana; said bonds to become due and payable twenty years after the date of their issue, and to bear interest at the rate of eight per cent. per annum, the interest payable annually at the office of the city treasury.

SEC. 3rd. Said election shall be by ballot, and the ballots shall be printed or written thus: For the subscription of the fifty thousand dollars to the Clarksville and Western Railroad, or to the Quincy, Alton and St. Louis Railroad; against the subscription of fifty thousand dollars to the Clarksville and Western Railroad, or to the Quincy, Alton and St. Louis Railroad.

51 SEC. 4th. If at the counting of the votes and the certificate of the judges of election on the above proposition named in the first and second sections of this ordinance, it shall be found from said certificate that two-thirds majority of all the legal votes cast at said election shall be in favor of said proposition, then it shall and may be lawful for the city council, by resolution, to direct the mayor to subscribe in the name of the city to the capital stock of either one of said company', but in no event shall the entire subscription made to one or both of said companies exceed the sum of fifty thousand dollars; and if the certificate shall not show a legal or two-thirds majority, then this ordinance shall be void.

SEC. 5th. The mayor is hereby instructed to see the county court and procure the necessary action on the part of the county court to give to the voters of the city of Louisiana a legal registration prior to the fifth day of September, 1871.

SEC. 6th. This ordinance to take effect and be in force from and after its passage.

Passed Aug. 10th, 1873.

WM. PARKER, *Mayor*.

Attest:

N. H. GRIFFITH,
Clerk C. C.

And the ordinance No. 628, which is as follows:

Ordinance No. 628.

An ordinance in relation to subscriptions and contracts with the Quincy, Alton and St. Louis Railroad Company.

Whereas the vote of the city of Louisiana, in the county of Pike, in the State of Missouri, upon the proposition set forth in ordinance No. 621, passed August 10th, 1871, of the city council of said city, for and against a subscription of fifty thousand dollars to the capital stock of the Quincy, Alton and St. Louis Railroad Company, or to the Clarksville and Western Railroad Company, as in said ordinance expressed,

and under the laws of said State, the charter and its amendments
52 of said city, resulted in favor of said subscription; and whereas, also, said council, after due consideration, regarded it to be the interest of said city to subscribe the said fifty thousand dollars to the capital stock of the Quincy, Alton & St. Louis Railroad Company: Therefore, be it ordained by the city council of the city of Louisiana, in the county of Pike, and State of Missouri, as follows:

SEC. 1st. That the mayor of said city do make subscription for said city of Louisiana to the capital stock of said Quincy, Alton and St. Louis Railroad Co., of shares in the same, equal in amount to fifty thousand dollars, payable in the bonds of said city, with coupons in the usual form for the interest accruing on said bonds respect*fully*, to be thereto respect*fully* attached; such coupons to be signed by the mayor and counter by the clerk of said city; and the mayor of said city is hereby authorized and directed to cause forms of said bond and coupon as aforesaid to be prepared, and the same executed and delivered in payment of said subscription in the way and manner hereinafter provided; said bonds to be in the sum of one thousand dollars each, and to bear interest from their date at the rate of eight per cent. per annum, payable annually on the first day of January in each year, commencing with January 1st, 1873, and to bear date October 2d, 1871, and to be payable to bearer twenty years thereafter, and both interest and principal payable at the office of city treasurer of said city; and said bonds shall be sealed with the corporate seal of said city of Louisiana, signed by the mayor and countersigned by the clerk of said city; and the said mayor is hereby authorized and directed that said bonds and coupons, when made and executed as aforesaid, be deposited by said mayor with Hugh Allen as trustee, and that said bonds shall, by said trustee, be held in trust for the use and benefit of
53 the Quincy, Alton and St. Louis Railroad Company, and shall by said trustee be delivered to said Quincy, Alton and St. Louis Railroad Company, or to its order, in payment of said subscription, so soon as said Quincy, Alton & St. Louis Railroad shall be built and operated from the city of Quincy, in the county of Adams and State of Illinois, to a point on the east bank of the Mississippi River, opposite the said city of Louisiana, and thence across said river by a bridge or transfer boat upon which passenger and freight cars shall be transferred into the city; and shall also erect a depot building in the said city of Louisiana, and build necessary main tracks or side tracks for the transaction of the business of said railroad in said city, or shall erect a depot building in said city jointly with the Louisiana and Missouri River Railroad Company: Provided, however, That the erecting of said depot building, either jointly or severally, nor the erecting or building main or side tracks, shall not be a condition precedent to the delivery of said city bonds to said railroad company by said trustee, unless said city shall, within sixty days from the passage of this ordinance, grant to said Quincy, Alton and St. Louis Railroad Company suitable and convenient grounds upon which to erect said depot building, together with grounds for main and one or more side tracks, necessary for the transaction of the business of said railroad in said city, together with all necessary right of way over and across the grounds belonging to said city fronting upon the Mississippi River and commonly known as the levee, for the purpose of building and operating their said railroad over and across the same. That said mayor, at the time of depositing said bonds, shall take a written agreement from said trustee, in which said trustee shall agree

to deliver said bonds to said railroad company or to its order so
54 soon as said railroad company shall have complied with the terms and conditions heretofore in this ordinance stated. And said agreement shall contain terms and conditions of this ordinance, and when said agreement is properly executed by said trustee, and said bonds duly executed and deposited with said trustee as aforesaid, then said mayor shall deliver *said mayor shall deliver* said last-mentioned agreement to said railroad company or its attorney, Bryant P. Scofield, for the use and benefit of said Quincy, Alton & St. Louis Railroad Company.

SEC. 2. It is hereby further stipulated and agreed, that as a further condition for the subscription of fifty thousand dollars as herein provided for, that the said Quincy, Alton and St. Louis Railroad Company shall not build or suffer to be built any line of railroad connecting their said railroad with the Louisiana branch of the St. Louis, Jacksonville and Chicago Railroad at any point on said branch railroad, except at the point of intersection on the bank of the river opposite to the city of Louisiana, and is hereby expressly stipulated and agreed that in the event that said road is not completed as herein set forth on or before the 1st day of January, 1872, then, and in that event, the bonds deposited with the trustee herein named shall bear no interest until said road is completed.

SEC. 3d. This ordinance shall be a binding, valid and existing contract between said city of Louisiana, in the State of Missouri, on the one part, and the Quincy, Alton and St. Louis Railroad Company, a corporation of the State of Illinois, of the other part, duly organized and existing under the said State of Illinois, and shall not be revoked, amended, modified or repealed without the written consent of both parties mentioned. And that a certified copy of said ordinance shall be signed by the mayor of said city and countersigned by the clerk, and attested with the corporate seal of said city, and the same delivered
55 to the said Quincy, Alton & St. Louis Railroad Company or to Bryant, T. Scofield, as their attorney, and that upon the delivery of said certified copy of this ordinance, then the said Quincy, Alton & St. Louis Railroad Company shall, by themselves or their attorney, Bryant T. Scofield, file their written acceptance of the terms and conditions of this ordinance with the clerk of said city.

Passed September 26th, 1871.

WM. PARKER, *Mayor.*

Attest:

N. H. GRIFFITH,
Clerk C. C.

That just prior to the election mentioned in said ordinance No. 621, there was made and perfected according to law a full registration of the qualified voters in the city of Louisiana, for the purpose of testing the sense of said voters in respect to the subscription of stock in the railroad as mentioned in said ordinance No. 621; that the number of all said qualified voters was three hundred and forty-six (346); that prior to said election poll-books were made out according to law, and said election was duly held to take the sense of said qualified voters of said city touching said subscription, and at said election, out of said qualified voters of said city, 336 voted for said subscription to said railroad and only 10 of said qualified voters of said city voted against said subscription, and that more than two-thirds of all the qualified voters of said city voted in favor of said subscription at said election; that afterwards the proper authorities of said city, as mentioned in said ordinance No.

628, subscribed to the stock of the said Quincy, Alton and St. Louis Railroad the sum of fifty thousand dollars on the terms and conditions mentioned in said ordinance No. 628, and payable as therein expressed; and that the Quincy, Alton and St. Louis Railroad fully performed the terms and conditions of said subscriptions, after which said bonds were delivered by said city to said Quincy, Alton and St. Louis Railroad Company, and that said city of Louisiana paid without objection the
56 first interest coupons falling due upon said bonds.

The "Act to amend an act entitled 'An act to amend and reduce into one the several acts incorporating the town of Louisiana and to organize the same into a city,' approved March 14th, 1849, and the several acts amendatory thereof, said act, when amended, shall read as follows: approved March 12, 1870," was in evidence and relied on by both parties. Session acts 1870, page 386. Sections 8 and 9 of the III article of said act are in these words:

"SEC. 8. The bonded or funded debt of the city for all purposes, including one hundred thousand dollars subscribed (or to be lawfully subscribed), to railroads terminating at or passing through the city of Louisiana, shall not exceed the sum of two hundred thousand dollars: provided, however, that said debt may be increased to a sum not exceeding two hundred and fifty thousand dollars in all, by ordinance or ordinances properly passed and submitted to an election under the authority of the city council of all resident tax payers of the city, that is to say, of all adult persons who shall have been assessed and actually paid a tax on real or personal property for the year or the year previous to the year in which such election shall be held, and at such election the judges holding the same shall require proof of the payment of such tax before recording the vote of any person offering to vote at such election, and a majority of all the legal votes cast at said election shall determine the question for or against such ordinance.

"SEC. 9. The city shall have power to subscribe for stock in any incorporated company connecting with the city of Louisiana, or give a bonus to any institution of learning by submitting an ordinance making the appropriation or authorizing the issue of bonds for any such purpose to a vote of the qualified voters, as provided by section 8 of the city, at any general election held in the city, or any special elec-
57 tion expressly ordered, at which election a majority of the votes cast shall be for such ordinance."

Section 14 of article VII of said act is in the following words:

"The city shall not at any time become a subscriber for any stock in any corporation, except as authorized by this or some other act of the general assembly, but said city may by ordinance appropriate money to aid in opening any road leading to the city, or in other improvements within the city, or in building any bridge within two miles of the city, and which may be deemed of general public benefit to the inhabitants of the city; provided, however, that no appropriation shall be made for any improvement beyond the limits of the city unless a vote be taken on such appropriation at some general election or special election ordered for that purpose, and a majority of all votes polled be cast in favor of that appropriation."

(The whole or any part of said act may be produced and read in the Supreme Court by either party.)

The defendant produced and read in evidence, to maintain the issues on its part, a bond of said city, being as follows:

UNITED STATES OF AMERICA.

No. 62.] STATE OF MISSOURI. [$1,000.

City of Louisiana railroad bond.

Interest eight per cent. per annum, payable annually.

Know all men by these presents that the City of Louisiana, in the State of Missouri, is indebted to or bearer in the sum of one thousand dollars, lawful money of the United States of America, which the said City of Louisiana promises to pay on the second day of October, 1891, at the treasurer's office in the city of Louisiana, Mo., with interest thereon at the rate of eight per cent. per annum, payable annually on the first day of January in each year, upon presentation and surrender of the annexed coupons as they severally become due and payable.

This bond is issued by the City of Louisiana under authority of
58 the general assembly of the State of Missouri, entitled "An act to amend and to reduce into one the several acts incorporating the city of Louisiana," approved March 25th, 1870. Also, an ordinance of the city council of the City of Louisiana, No. 628, passed September 26th, 1870.

In witness whereof the City of Louisiana has caused its seal to be hereto affixed, and the same to be signed by the mayor and countersigned by the clerk of the city council, at city of Louisiana, Mo., the fourth day of November, in the year of our Lord eighteen hundred and seventy-one.

[SEAL.]

WM. PARKER,
Mayor City of Louisiana, Mo.

Countersigned.

N. H. GRIFFITH,
Clerk City Council.

It was admitted by the plaintiff that all the bonds issued under said ordinance No. 628, are in the form and effect like the one read in evidence by defendant, and that the coupons in suit were taken from the bonds so issued and mentioned in said ordinance No. 628.

The plaintiff moved the court to decide the law to be as set forth in the instructions numbered respectively 1, 2, 3, and 4, but the court refused to give any one of them, and the plaintiff excepted to the opinion of the court in refusing each of said instructions. The said instructions are as follows, to wit:

No. 1.

The plaintiff moves the court to decide that if it finds from the evidence that ordinance 621 was passed by the mayor and council of the city of Louisiana, and ordinance 628 was also passed by said mayor and council; that the election mentioned therein was held, and with the result stated; that by authority of said ordinances said city subscribed fifty thousand dollars to the stock of said Quincy, Alton, & St. Louis Railroad Company, payable in bonds of said city, as mentioned in said ordinance 628; that said city made and deposited said bonds with coupons with an agent, as mentioned in said ordinance 628, to be de-
59 livered to said railroad co. so soon as said railroad co. should build and operate its road from Quincy, Ills., to a point on the

east bank of the Mississippi River opposite said city of Louisiana, and thence across said river by a bridge or transfer boat upon which passenger and freight cars should be transferred into said city of Louisiana, and said railroad co. should erect a depot building, and make necessary main and side tracks in said city of Louisiana for transacting the business of said railroad in said city of Louisiana, the making of said depot and tracks not to be a condition precedent to the delivery of said bonds and coupons unless said city of Louisiana should within 60 days from Sept. 21, 1871, grant to said railroad company suitable and convenient grounds, with right of way, for said depot and tracks; that such grant was not made within such time; that prior to the passage of said ordinances said railroad company had promised and agreed with said city of Louisiana, in consideration of the making of said subscription, to perform all said conditions on its part, and did build and operate its road from Quincy, Illinois, to the point named opposite said city of Louisiana, and thence across said river by a transfer boat on which passenger and freight cars were transferred into said city of Louisiana, and did construct said depot building and tracks in said city of Louisiana, all which was known to and accepted and received by said city of Louisiana as full and satisfactory performance of said conditions on the part of said railroad company, and afterwards said bonds and coupons (part of which coupons are in suit in this case) were delivered to said railroad company by said city of Louisiana, or with its knowledge and consent, then the plaintiff is entitled to recover the amount of said coupons with interest from due, provided he has shown himself to be the owner thereof.

60 *Plaintiff's instruction No. 2.*

The plaintiff moves the court to decide that if it find from the evidence in the cause that ordinances were passed by said city of Louisiana, and an election held, and a subscription made, and contract entered into between said city of Louisiana and the Quincy, Alton and St. Louis Railroad, and bonds and coupons of said city made and deposited with an agent for delivery to said railroad company on the performance of conditions as mentioned in plaintiff's instructions No. 1, and that the grounds and right of way were not granted to the railroad company within the 60 days mentioned in said contract; and that said railroad company did build and operate its railroad from Quincy, Illinois, to a point on the east bank of the Mississippi River opposite said city of Louisiana, which point was within high and low water mark on the east side of said river, and did operate its railroad from said point across said river by a transfer boat on which passenger cars and freight cars were transferred into said city, but in so operating its road did use a small portion of a track of the Chicago & Alton Railroad whereby to reach said transfer boat, and did also use a transfer boat of said Chicago & Alton Railroad to operate its road across said river, upon an arrangement between said railroads, whereby the said Quincy, Alton & St. Louis Railroad compensated said Chicago & Alton Railroad for the use of its track and transfer boat; and said Quincy, Alton & St. Louis Railroad built said depot building and constructed said tracks in said city of Louisiana as required by the contract; and said city of Louisiana, knowing that said Quincy, Alton & St. Louis Railroad so used such transfer boat and small portion of the Chicago and Alton Railroad track, assented thereto and accepted, was *was* done as full performance of said conditions by said Quincy, Alton & St. Louis Railroad Company, and in con-
61 sideration thereof delivered or assented to the delivery of said

bonds and coupons to said railroad company, and paid without objection the first interest falling due on said bonds, the plaintiff is entitled to recover as aforesaid, provided he is the owner of the coupons in suit.

Plaintiff's instruction No. 3.

The plaintiff moves the court to decide the law to be that if it finds from the evidence that ordinances were passed, an election held, a subscription and contract made by and between the city of Louisiana and the Quincy, Alton and St. Louis Railroad, and bonds and coupons made by said city, and deposited with an agent for delivery to said railroad company, upon conditions as mentioned in plaintiff's instruction No. 1; but said bonds and coupons (of which those in suit are part) were delivered to said railroad company without performance of said conditions, and without consent of said city, nevertheless the plaintiff is entitled to recover, provided he is the owner of the coupons in suit, if he received them in good faith, and for value, in the ordinary course of business, without knowledge of the non-performance of said conditions; and the legal presumption is he did so receive them, and the burthen of proof is on the defendant to show the contrary.

Plaintiff's instruction No. 4.

The plaintiff moves the court to decide the law to be that if the city of Louisiana passed said ordinances Nos. 621 and 628, and held said election with the result named therein, and made the subscription, and entered into the contract with the Quincy, Alton and St. Louis Railroad, and made the bonds and coupons, and deposited them with an agent for delivery to said railroad company, on the performance
62 of conditions, as all those matters are set forth in plaintiff's instruction No. 1; still, if the defendant delivered said bonds and coupons to said railroad company, or assented to such delivery, without a full performance of said conditions, such conditions must now be regarded as performed, and said bonds and coupons valid and binding on said city.

The court having refused the plaintiff's instructions, proceeded further to decide, and did decide the law to be as follows, to wit:

"The pretended authority under which the subscription was made, by supposed virtue of which bonds were issued, to which bonds the coupons in suit were attached, is void under the constitution of the State then existing. Hence it is not necessary to enter upon the inquiry whether alleged conditions precedent were or were not performed. The court holds that under the constitution of the State of Missouri no power was granted to or could exist in the city of Louisiana to do what it undertook to do under the ordinances referred to.

"Therefore, as by the decisions of the Supreme Court of the United States no power existed in the city to issue the bonds to which these coupons were attached, the bonds are absolutely void as obligations of the city, and consequently all the coupons thereto attached.

"Having reached this conclusion, it is unnecessary for the court to enter upon the issues raised by the pleadings. The court thereupon finds for the defendant, and orders judgment accordingly."

To which ruling of the court, and to every part thereof, the plaintiff at the time excepted.

The plaintiff afterward, in due time, moved the court in writing to set aside the verdict, and grant a new trial of the cause, which motion is in words and figures as follows, to wit:

63 *Motion for a new trial.*

In the circuit court of the United States, E. district of Mo., Octo. T. 1876.

CHARLES G. LUND, ADM'R,
vs.
THE CITY OF LOUISIANA, DEFENDANT.

And now, at this day, comes the plaintiff in the above-named cause, and moves the court to set aside the verdict and grant a new trial in the cause, for the following reasons:

1. The court refused a proper instruction asked by plaintiff on the trial.
2. The court erred in the law of the case.
3. The verdict found by the court was without any evidence to support it.
4. The verdict was contrary to the evidence.
5. The verdict was contrary to the law and the evidence.

GLOVER & SHEPLEY,
For the Plff.

The court overruled said motion for new trial, and the plaintiff excepted at the time to the overruling of said motion for new trial, and prays the court to sign, seal, and allow his said several exceptions, which is done.

SAMUEL TREAT, [SEAL.]
Judge.

And afterwards, to wit, at an adjourned session of said circuit court, begun and holden on the 8th day of January, 1877, the following further proceedings were had in said cause, to wit:

JOHN A. ALLEN, ADMINISTRATOR OF THE ESTATE of Charles J. Lund, deceased, plaintiff,
vs.
THE CITY OF LOUISIANA, DEFENDANT.

64 Now comes the plaintiff, by his attorneys, and presents to the court a writ of error to remove this cause to the Supreme Court of the United States, and a citation, citing and admonishing the said defendant to be and appear at a Supreme Court of the United States on the second Monday of October next, and thereupon said writ of error is allowed, and said citation signed by the judge; and the said plaintiff also presents to the court the bond required on the allowance of a writ of error, which bond is by the court approved, and ordered to be filed as part of the record in this cause.

And the said bond, so approved as aforesaid, is in words and figures following, to wit:

Bond.

Know all men by these presents, that we, John A. Allen, administrator of the estate of Charles J. Lund, as principal, and John A. Allen and Thomas J. Whitely as sureties, are held and firmly bound unto the City of Louisiana, a municipal corporation in the State of Missouri, in the full and just sum of five hundred dollars, to be paid to the said City of Louisiana or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated this 8th day of January, in the year of our Lord one thousand eight hundred and seventy-seven.

Whereas lately, at the September term, 1876, of the circuit court of the United States for the eastern district of Missouri, in a suit depending in said court between John A. Allen, administrator of the estate of Charles J. Lund, deceased, plaintiff, and the City of Louisiana, defendant, judgment was rendered against the said John A. Allen, administrator of the estate of Charles J. Lund, and the said John A. Allen, administrator as aforesaid, having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said City of Louisiana, citing and admonishing it
65 to be and appear at a Supreme Court of the United States, to be holden at Washington the second Monday of October next:

Now the condition of the above obligation is such, that if the said John A. Allen, administrator as aforesaid, shall prosecute said writ to effect, and answer all damages and costs if he fail to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

JOHN A. ALLEN, [SEAL.]
Adm'r of the estate of Chas. J. Lund.
JOHN A. ALLEN. [SEAL.]
THOS. J. WHITELY. [SEAL.]

Approved by—

SAMUEL TREAT, *Judge.*

66 UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

I, M. M. Price, clerk of the circuit court of the United States in and for the eastern district of Missouri, do hereby certify that the writing hereto annexed is a true and complete transcript of the record and proceedings had in the case of John A. Allen, adm'r of the estate of Charles J. Lund, dec'd, plaintiff, against the City of Louisiana, defendant, as fully as the same remain on file and of record in said case in my office.

In witness whereof, I hereunto subscribe my name and affix the seal of said court, at office in the city of St. Louis, in said district, this 30th day of January, in the year of our Lord eighteen hundred and seventy-seven.

[SEAL]

M. M. PRICE,
Clerk of said Court,
By A. P. SELBY, *Deputy.*

67 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the circuit court of the United States for the eastern district of Missouri, greeting:

Because in the record and proceedings, as also in the rendition of the

judgment of a plea which is in the said circuit court, before you, at the September term, 1876, thereof, between John A. Allen, administrator of the estate of Charles J. Lund, deceased, was plaintiff, and the City of Louisiana was defendant, a manifest error hath happened, to the great damage of the said plaintiff, as by his complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C., on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 8th day of January, in the year of our Lord one thousand eight hundred and seventy-seven.

Issued at office in the city of St. Louis, with the seal of the circuit court of the United States for the eastern district of Missouri, dated as aforesaid.

[SEAL.]

M. M. PRICE,
Clerk Circuit Court United States, Eastern District of Missouri,
By A. P. SELBY,
Deputy.

Allowed by—

SAMUEL TREAT,
Judge.

Return to writ.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the *the* record and proceedings in the within entitled case, with all things concerning the same.

In witness whereof, I hereunto subscribe my name, and affix the seal of said circuit court, at office in the city of St. Louis, this 30th day of January, A. D. 1877.

[SEAL.]

M. M. PRICE,
Clerk of said Court,
By A. P. SELBY,
Deputy.

(Indorsed:) No. United States circuit court, eastern district of Missouri. John A. Allen, adm'r, vs. City of Louisiana. Writ of error to the circuit court of the United States, eastern district of Missouri.

68 The United States of America to the City of Louisiana, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, D. C., on the second Monday of October next, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States for the eastern district of Missouri, wherein John A. Allen, administrator of the estate of Charles

J. Lund, deceased, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Samuel Treat, judge of the circuit court of the United States for the eastern district of Missouri, this 8th day of January, in the year of our Lord one thousand eight hundred and seventy-seven.

SAMUEL TREAT.
Judge United States Circuit Court, Eastern District of Missouri.

Formal service of this citation is waived, this 8 day of Feb'y, 1877.
D. P. DYER,
Att'y of Def't.

(Indorsed:) United States circuit court, eastern district of Missouri. John A. Allen, adm'r, &c., vs. City of Louisiana. Citation. Filed Jan'y 8, 1877. M. M. Price, clerk.

(Indorsement on cover:) No. 383. John A. Allen, administrator of the estate of Charles J. Lund, deceased, plaintiff in error, vs. The City of Louisiana. E. Missouri C. C. U. S. Filed 24th January, 1878.

O

In Supreme Court of United States.

JOHN A. ALLEN,
ADM'R OF CHARLES J. LUND,
Plaintiff,

vs.

THE CITY OF LOUISIANA,
Defendant.

IN ERROR.

STATEMENT OF THE CASE

—BY—

GLOVER & SHEPLEY,

Attorneys for the Plaintiff in Error.

ST. LOUIS:
SLAWSON & PIERROT, 915 N. SIXTH STREET.

1879.

In Supreme Court of United States.

JOHN A. ALLEN,
ADM'R OF CHARLES J. LUND,
Plaintiff,

vs.

THE CITY OF LOUISIANA,
Defendant.

} IN ERROR.

STATEMENT OF THE CASE BY GLOVER & SHEPLEY, ATTORNEYS, FOR THE PLAINTIFF IN ERROR.

The plaintiff, intestate sued the city of Louisiana in the Circuit Court for the Eastern District of Missouri upon certain coupons taken from alleged bonds of said city negotiable in form.

These bonds had been executed and delivered to the Quincy, Alton & St. Louis Railroad Company in payment of an alleged subscription by the authorities of said city of 50,000 dollars to the said Railroad Co. The defendant appeared to the action and filed several pleas in bar; among them were pleas to the effect that the city of Louisiana had no power to subscribe for the stock; and that the Railroad Company had no power to receive the subscription; and for these reasons the whole proceedings to that end including the ordinances of the city, the election, the election returns, the subscription and the issuing by the city officials of the bonds and coupons, were void. During the time of these proceedings the constitution of Missouri contained the following clause:

"The General Assembly shall not authorize any county, city or town to become a stockholder in, or to loan its credit

to, any company, association or corporation unless two thirds of the qualified voters of such county, city or town, at a regular or special election to be held therein shall assent thereto." Art. x, §xiv, Constitution of Missouri, 1865.

During the same time the charter of the city of Louisiana, by Act approved March 12th, 1870, contained the following clauses: [Art. iii, § 8.]

"The bonded or funded debt of the city for all purposes including one hundred thousand dollars, subscribed, *or to be lawfully subscribed* to railroads terminating at, or passing through the city of Louisiana, shall not exceed the sum of two hundred thousand dollars; *provided*, however, that said debt may be increased to a sum not exceeding two hundred and fifty thousand dollars in all, by ordinance or ordinances properly passed, and submitted to an election under authority of the City Council *of all resident tax-payers of the city*, that is to say of all *adult persons who shall have been assessed and actually paid a tax on real or personal property for the year, or the year previous to the year in which such election shall be held, and at such election the judges holding the same, shall require proof of the payment of such tax, before recording the vote of any person offering to vote at such election, and a majority of all the legal votes cast at such election shall determine the question for or against such ordinance.*"

"§ 9. The city shall have power to subscribe for stock in any incorporated railroad company connecting with the city of Louisiana, or give a bonus to any institution of learning, by submitting an ordinance making the appropriation, or authorizing the issue of bonds for any such purpose to a vote of the qualified voters [*as provided by section eight*] of the city at any general election held in the city, or at any special election expressly ordered at which election *a majority of the votes cast shall be for the ordinance.*

"Also the following § 14, Art. vii, of said charter: "The city shall not at any time become a subscriber for any stock in any corporation except as authorized by this *or some other Act of the General Assembly;* but said city may by ordinance

appropriate money to aid in opening any road leading to the city; or in other improvements within the city; or in building any bridge within two miles of the city, and which may be deemed of general public benefit to the inhabitants of the city, provided, however, that no appropriation shall be made for any improvement beyond the limits of the city, unless a vote be taken on such appropriation at some general election or special election ordered for that purpose, and a majority of all votes polled be cast in favor of that appropriation." (See Session Acts of Missouri, 1870, pp. 386 to 401 inclusive.)

Section 17 of Chapter 63 "Of Railroad Companies," General Statutes of Missouri of 1865, p. 338 is in these words: "Sec. 17. It shall be lawful for the county court of any county; the city council of any city; or the trustees of any incorporated town; to take stock for such county, city or town in, or loan the credit thereof to any railroad company duly organized under this or any other law of the State; provided, that two-thirds of the qualified voters of such county, city or town, at a regular or special election to be held therein, shall assent to such subscription."

Sec. 2 of an act to amend said chapter 63 "Of Railroad Companies" so as to authorize the consolidation, leasing and extension of railroads, approved March 24, 1870, (Session Acts of Missouri, pp. 89, 90,) is in these words:

"§2. The said chapter [63] is hereby amended by adding thereto an additional section, to wit, section 52, 'Any railroad company heretofore incorporated or hereafter organized in pursuance of law, may at any time, by means of subscription to the capital stock of any other railroad company, or otherwise aid such company in the construction of its railroad, within or without the State for the purpose of forming a connection of the last mentioned road with the road owned by the company furnishing such aid; or any such railroad which may have built its road to the boundary line of the State may extend into an adjoining State, and for that purpose may build or buy or lease a railroad in such adjoining State and operate the same and may own such real estate

and other property in such adjoining State as may be convenient in operating such road; or any railroad company organized in pursuance of the laws of this or any other State, or of the United States may lease or purchase all or any part of a railroad with all its privileges, rights, franchises, real estate and other property, the whole or a part of which is in this State, and constructed owned or leased by any other company; if the lines of the road or roads of said companies are continuous, or connected at a point either within or without this State, upon such terms as may be agreed on between said companies respectively; *or any railroad company duly incorporated and existing under the laws of an adjoining State of the United States, may extend, construct, maintain and operate its railroad into and through this State and for that purpose shall possess and exercise all the rights powers and privileges conferred by the general laws of this State upon railroad corporations organized thereunder;* and shall be subject to all the duties, liabilities and provisions of the laws of this State concerning railroad corporations, as fully as if incorporated in this State; provided, that no such aid shall be furnished nor any purchase, lease, sub-letting or arrangement perfected, until a meeting of the stockholders of said company or companies *of this State* party or parties to such agreement whereby a railroad in this State may be aided purchased, leased, sublet or affected by such arrangement shall have been called by the Directors thereof at such time and place and in such manner as they shall designate and the holders of a majority of the stock of such company in person or by proxy shall have assented thereto, or until the holders of a majority of the stock of such company shall have assented thereto in writing and a certificate thereof signed by the president and secretary of said company or companies shall have been filed in the office of the Secretary of State; and provided further, that if a railroad company of another State shall lease a railroad the whole or part of which is in this State, or make arrangements for operating the same as provided in this act, or shall extend its rail-

road into this State, or through this State, such part of such railroad as is within this State shall be subject to taxation and shall be subject to all regulations and provisions of law governing railroads in this State," &c. (Session Acts of 1870, p. 89 to 91 inc.)

August 10, 1871 the City Council of the city of Louisiana passed an ordinance No. 621 in legal form and manner, requiring an election to be held on the 5th Sept., 1871, to take the sense of the *lawful voters* of said city on the proposition to take stock in the *Clarksville & Western Railroad Co.*, or in the *Quincy, Alton & St. Louis Railroad Company:* provided the Q. A. & St. L. R. R. Co. should cross the Mississippi river and make its southern terminus within the corporate limits of the city of Louisiana at a place to be agreed on, the subscription to stock by the city not to exceed fifty thousand dollars, said election to be conducted by the same judges, and at the same places as the general election held the Tuesday after the first Monday of March, 1871; and the returns to be made and certified in the same manner. The subscription whether made to the one railroad or the other to be paid in corporate bonds twenty years from date, to draw interest at 8 per cent per annum, and payable at the office of the City Treasurer. The votes to be taken by written or printed ballots for or against subscription. And if at counting the votes and the certificate of the judges, it should be found from said certificate that two thirds majority of *all the legal votes* cast at the election were in favor of the proposition, then the subscription was to be made to either one of said roads, the entire subscription not to exceed fifty thousand dollars. The said ordinance further provided that there should be a legal registration of the voters prior to the day of election, and was in force from its passage.

The record shows that the registration was made prior to the election; and that the whole number of lawful voters of the city was 346. On the day appointed by said ordinance No. 621, the election was held, and the certified returns showed for the subscription 336 votes; against the subscrip-

tion only 10 votes. On the 26th of September, 1871, the City Council of Louisiana passed Ordinance 628 in legal form and manner. It took effect from its passage, and after reciting that the election directed to be held by Ordinance 621 had been held and that the vote resulted in favor of the proposed subscription, and that the City Council deemed it for the interest of the city to subscribe fifty thousand dollars to the stock of the Quincy, Alton & St. Louis Railroad Company; the mayor of the city was directed to make said subscription and he did make it, on certain terms and conditions therein set forth.

The plaintiff claimed the Railroad Co. complied fully with all conditions. This the city denied: but the bonds and coupons were made and delivered to the railroad, and put on the market and sold.

The question raised by the pleas of the city touching compliance by the railroad company with the terms of the contract is immaterial under the ruling of the Court which was to the effect that the city of Louisiana had *no power whatever*, even by the vote of 336 out of 346 of its lawful voters, to subscribe the stock or issue its bonds and coupons to the railroad company, and ignored every other question.

This ruling was in these words:

"The pretended authority under which the subscription was made, by supposed virtue of which the bonds were issued, to which bonds the coupons in suit were attached, is void, under the Constitution of the State then existing * * "no power was granted to or could exist in the City of Louisiana to do what it undertook to do under the ordinances referred to, as by the decisions of the Supreme Court, U. States, no power existed in the city to issue the bonds to which these coupons were attached; the bonds are absolutely void as obligations of the city, and consequently all the coupons.

"Having reached this conclusion it is unnecessary for the Court to enter upon the other issues. The Court finds for the defendant and orders judgment accordingly."

The plaintiff filed his motion to set aside the verdict and award a new trial, which was overruled. The plaintiff has here filed the following

ASSIGNMENT OF ERRORS.

First. The Court erred in ruling that the City of Louisiana had no lawful power to subscribe to the stock of the Quincy, Alton & St. Louis Railroad Co.

Second. The Court erred in ruling that the bonds and coupons mentioned in plaintiff's suit were void.

Third. The Court erred in ruling that the ordinance of said city No. 621 was void.

Fourth. The Court erred in ruling that the assent of more than two-thirds of the lawful voters of said city in favor of said subscription at the election held by virtue of said ordinance No. 621 conferred no authority on said city to make said subscription or to issue the bonds or coupons in question.

Fifth. The Court erred in overruling plaintiff's motion for new trial.

POINTS AND AUTHORITIES FOR THE PLAINTIFF IN ERROR, BY GLOVER & SHEPLEY, ATTORNEYS.

FIRST. We concede that unless the city of Louisiana was authorized by the Legislature to subscribe to the stock of the Q. A. & St. Louis Railroad Co., with the assent of two-thirds of its lawful (qualified) voters, all proceedings to that end were void; and the bonds when issued and the coupons sued on were void. We maintain that the city was fully and expressly authorized in this case to subscribe for the stock, provided an election was held according to the constitutional requirement and a majority of two-thirds of the

lawful voters of the city, at a regular or special election, assented to such subscription.

3 Wallace 327, *Thompson* vs. *Lee County.*

1 Wallace, 220, *Gelpcke* vs. *Dubuque.*

SECOND. We insist that Section 8 of Art. iii of the City Charter, (Session Acts 1870, p. 392,) fully authorized the city of Louisiana to subscribe for the stock. It is in these words: "The bonded or funded debt of the city for all purposes, including one hundred thousand dollars subscribed, or *to be lawfully subscribed*, to railroads terminating at, or passing through the city of Louisiana, shall not exceed the sum of two hundred thousand dollars." P. 393. The legislative intention to confer upon the city the power to subscribe in a *lawful* manner could not be more clearly expressed. It was not necessary to add that in case a lawful subscription was made the laws must be complied with.

That was a matter of course. Of course the proper election must be held, and two-thirds of the *lawful voters* must assent; or there could be no lawful subscription. If the words already quoted were all that the statute contained, the power would not be questioned. But Section 8 contains some additional words.

It proceeds to say, that "said debt" may be increased; *provided a majority of the tax-payers* shall vote for it, and this is supposed to qualify the previous expressions. And Section 9 declares that "The city shall have power to subscribe for stock in any incorporated railroad company connecting with the city of Louisiana * * * by submitting an ordinances authorizing the issue of bonds for any such purpose to a vote of the qualified voters, (as provided by Section 8) of the city, at any general election held in the city, or at any special election expressly ordered, at which election a majority of the votes cast shall be for such ordinance."

The provisions in relation to a vote of a majority of tax-payers, in Sections 8 and 9 are admitted by all to be unconstitutional.

Now we claim that an unconstitutional statute or part of a statute is null and void.

That which is null and void can have no effect. The provision therefore about a vote of tax-payers being of no effect, it is as if it did not exist, and precisely as if it was not in the statute. The consequence is that the power of the city to lawfully subscribe the sum of one hundred thousand dollars to railroads terminating at, or passing through it, remains intact.

In 95, U. S. R., p. 80, *Packet Co.* vs. *Keokuk*, this Court said "statutes constitutional in part, will be sustained so far as not in conflict with the Constitution, provided the allowed and prohibited parts are severable. The question then is can the valid and void parts of this statute be severed. It directs a *lawful* thing to be done, but provides *unlawful* means for doing it. This is the precise case which has been so frequently before the courts, and always decided the same way, that is, the courts have held that the lawful thing must be done by *the lawful means*, and the *unlawful* means must be rejected."

See 1 Blackf. 374, *Armstrong* vs. *Jackson*.

The occupying claimant law gave the tenant pay for his improvements to be assessed by three commissioners.

The Court held the clause providing for commissioners unconstitutional, and caused the assessment to be made by a jury, the constitutional means. In the case at bar, the right to subscribe was declared to be in the city, if the lawful voters should assent to it, but the statute provided that only tax-payers should vote. On the authority in Blackford the unlawful provision must be disregarded and the constitutional mode of proceeding be employed instead, that is, the unconstitutional provision must be stricken out of the statute.

In *Clark* vs. *Ellis*, 2 Blackf. 8. the case was this: A justice of the peace was empowered in certain cases to impose fines above the constitutional limit. Nevertheless the jurisdiction was sustained in so far as not in conflict with the Constitution.

It was held that the justice might inflict a fine according to the Constitution; and the residue of the statute was stricken out. In 29 Ala., 573, *Mobile, etc,* vs. *The State*, the Court said the unconstitutional part of a statute may be considered as *no part of it*, and the rest shall stand. In 3 Rh. Is., 33, *State* vs. *Copeland*, a statute contained a clause providing it should be submitted to a vote of the people whether it should continue in force or not; and the statute was held valid as passed, and the clause for submitting it to vote considered void.

See also 6 How. Miss., 625 *Campbell* vs. *Union Bank.*
5 Gray, 100, *Commonwealth* vs. *Clapp.*
1 Gray, 1, *Fisher* vs. *McGirr.*
17 Mo., 529, *State* vs. *Field.*
54 Mo. R. 593, *State* vs. *Clark.*

58 Mo. 199, *Griswold* vs. *St. Louis County*, was a case in which power was conferred by statute to take certain property for public use; provided the value of the property taken should be fixed by the assessment of 1873; and it was held that such assessment was not a lawful means for fixing the value, because it was unconstitutional and void; but that the value must be ascertained in the lawful way.

3 Ohio, N. S. 1, *Exchange &c.* vs. *Hines.*
5 Ohio, N. S. 497, *State* vs. *Perry County.*
22 Barb., 634, *Fisher* vs. *Beekman.*
25 Conn., 290, *State* vs. *Wheeler.*
2 Peters, 526, *Bank* vs. *Dudly.*

The unconstitutional clauses which the rule requires to be stricken out of a statute, may occur in the same section with the constitutional provisions to be enforced.

4 Scam., 470, *Willard* vs. *The People.*
3 Eng., 436, *State* vs. *Cox.*
37 Iowa, 649, *Weir* vs. *Cram.*

The statute directed the Court to try offenders by a jury of six; and it was held the words "of six" must be stricken out; and the trial be had by a jury which requires twelve.

That case is like this. The Constitution of Missouri declared that a subscription to a railroad should be made if two-thirds of the lawful voters assented.

The attempt of the Legislature after authorizing the subscription to be made lawfully, to substitute a majority of tax-payers in place of two thirds of the lawful voters was futile. The authority to subscribe remained dependent as before the act, on a vote by two-thirds of the lawful voters, and not on a vote of tax-payers; just as the right to a jury of twelve remained after the legislative attempt to put in its place a jury of six.

We are aware of the rule that "if the clauses of a statute are so mutually connected; so dependent on each other, *as conditions, considerations or compensations* for each other as warrant a belief that the Legislature intended them as a whole; and if all could not have effect the Legislature would not have passed any; then if any parts are unconstitutional the whole act is to be held void."

2 Gray, 84, *Warren* vs. *Mayor*.

The rule is sometimes stated thus: If the void provisions are so connected with the others that without them the substantial object of the act cannot be reached the whole act is void.

22 Cal., 379, *Robinson* vs. *Bidwell*.

But there is nothing of the kind here. This statute embraces only one object, and not two or more as to which a question could arise with respect to consideration or compensation one for another. The one sole object of the statute is the subscription. No opposing purpose is in conflict with it. It cannot, therefore, be assigned to the class of cases to which 2 Gray, p. 84, belongs. How is it possible to conceive the Legislature to be willing to allow a subscription in case a majority of tax-payers approved it, and not allow it in case two-thirds of the lawful voters approved it? Why if the Legislature was willing to authorize a subscription, should it attempt to do it by impossible means? Why

should it say lawful subscription if it meant unlawful? There is nothing to suggest that if the Legislature had known a majority of tax-payers could not confer the power to subscribe it would have refused to allow it at all. On the contrary, the statute shows clearly the purpose of the Legislature to authorize the subscription in the *lawful* way. Thus Section 8, Art. iii, of City Charter says, "the bonded or funded debt of the city for all purposes including one hundred thousand dollars subscribed *or to be lawfully subscribed* to railroads terminating at or passing through the city of Louisiana shall not exceed the sum of two hundred thousand dollars." (Sess. acts 1870 pp. 302–3). The intention of the statute, therefore, is to have a *lawful* subscription. It so expressly declares. A lawful subscription is the object of the act. It has been urged that Section 14, Art. vii, of the Charter prohibits any subscription unless authorized by a vote of a majority of tax-payers. The proposition is untenable.

Sec. 14, Art. 7, of the City Charter (Sess. Acts 1870, p. 400), is as follows:

Sec. 14. The city shall not at any time become a subscriber for any stock in any corporation, except as authorized by this or *some other act of the General Assembly;* but said city may by ordinance appropriate money to aid in opening *any road* leading to the city; or in building any bridge within two miles of the city; provided, however, that no appropriation shall be made for any *improvement beyond the limits* of the city unless a vote be taken on such appropriation at some general election or special election ordered for that purpose; and a majority of *all votes polled* be cast in favor of that appropriation.

Sec. 14 plainly shows that a majority vote of tax-payers was not intended as an indispensable condition to a subscription of stock, or an appropriation of money to a railroad. At the date of the City Charter, March 12 1870, there was no other act of the legislature making a subscription to a corporation depend on a majority vote of tax-payers.

Yet the Legislature did not confine the city to the law of the Charter. It expressly empowered the city to proceed for the purpose of making a subscription *under any other act of the General Assembly.*

It went further. It undertook to provide, that the city by ordinance might appropriate money to aid in opening *any road* leading into the city, or any other improvement within the city, without any vote at all, and required a vote only on the question of an improvement beyond the city limits. It should be remarked while we are seeking for the legislative intention, that the word *tax-payers* nowhere occurs in Section 14, and that the City Charter shows no fixed purpose in respect to any mode of proceeding preliminary to a railroad subscription, except that it be *lawfully* made. On the whole matter of Sections 8 and 9 Art. iii, and Section 14, Art. vii of the City Charter (Sess. Acts, 1870, pp. 392, 393 and 400) we have reached the following conclusions:

(1.) That Section 8 of Art. iii, City Charter, expressly authorizes the city to subscribe in the lawful manner one hundred thousand dollars to railroads terminating at or passing through it.

(2.) Said Section 8 prescribes no other condition to such subscription than that *it be lawfully made;* which is constitutional.

(3.) That the subsequent provision in Section 9, Art. iii, City Charter about a vote of tax payers is unconstitutional and void; and must be treated as null, stricken out of the act and disregarded.

(4.) That the ordinances of the city nos. 621 and 628 were passed in strict conformity to the constitutional parts of Sections 8 and 9, Art. iii and in disregard of the unconstitutional parts of said sections, and were valid ordinances, and the election by the lawful voters of the city was valid, and the subscription was valid under the express powers conferred by said Sections 8 and 9.

(5.) That a proper construction of Sections 8 and 9 of Art. iii of the City Charter requires them to read as follows:

Sec. 8. The bonded or funded debt of the city for all purposes, including one hundred thousand dollars, subscribed or to be lawfully subscribed to railroads terminating at or passing through the city of Louisiana shall not exceed the sum of two hundred thousand dollars.

Sec. 9. The city shall have power to subscribe for stock in any railroad company connecting with the city of Louisiana, or give a bonus to any institution of learning by submitting an ordinance making the appropriation or authorizing the issue of bonds for any such purpose to a vote of the qualified voters, as required by the Constitution, at any general election held in the city, or at any special election expressly ordered, at which election two thirds of the votes shall be for such ordinance.

The recital on the face of the bond that they were executed by virtue of authority derived from the City Charter was literally true.

THIRD. The power to subscribe to the stock of the railroad was conferred on the city by Sec. 2 of "An act to amend Chapter 63 of the General Statutes entitled 'Of Railroad Corporations', so as to authorize the consolidation leasing and extension of railroads" approved March 24, 1870 (Sess. Acts 1870, pp. 90, 91.) This section provides that "any railroad company duly incorporated and existing under the laws of an adjoining State of the United States may extend, construct, maintain and operate its road into and through this State and for *that purpose shall possess and exercise all the rights, powers and privileges conferred by* the general laws of the State upon railroad corporations organized thereunder; and shall be subject to all duties, liabilities and provisions of the laws of this State concerning railroad corporations as fully as if incorporated in this State," etc.

The purpose of this Act was to put the Quincy, Alton & St. Louis Railroad Co., and every other railroad company of any State adjoining Missouri and wishing to extend its road into Missouri on the same footing precisely with railroad

corporations organized and acting by virtue of Missouri charters.

It was an amendment of Chapter 63 of the General Statutes of Missouri entitled "Of Railroads" and gave the Quincy, Alton & St. Louis R. R. Company every right, power and facility for constructing its road into Missouri that any railroad corporation of Missouri possessed for constructing its road according to its charter. Now let us see what were the rights, powers and privileges of railroad corporations of Missouri in this behalf under said General Statutes.

Section 17 of Chapter 63 of Railroad Companies, (General Statutes Mo. of 1865, p. 338) is in these words:

"Sect. 17. It shall be lawful for the County Court of any county; the City Council of any city, or the Trustees of any incorporated town to take stock for such county, city or town in; or loan the credit thereof to any railroad company, duly organized under this or any other law of this State *provided* that two-thirds of the qualified voters of such county, city or town, at a regular or special election to be held therein shall assent to such subscription." Prior to the act of March 24, 1870, to authorize railroad corporations of States adjoining Missouri "to extend, construct and maintain" their roads into Missouri, no county, town or city was authorized to subscribe to the stock of any road not duly incorporated under the laws of Missouri.

Section 17 of Chapter 63 (the general railroad law of Missouri) severely limited such aid to corporations of Missouri. But the amendment to the general railroad law of Missouri by said act of March 24, 1870, for extending roads of foreign corporations into Missouri, removed the restriction and authorized all cities, towns and counties of Missouri to subscribe for stock in any railroad corporation proposing to extend its road into Missouri. The act of March 24, 1870, says expressly a railroad corporation of an adjoining State wishing to extend its road into Missouri, shall possess and exercise for that purpose every right, power and privilege which it would have if it was a railroad corporation of Missouri.

Undoubtedly one of these rights, powers and privileges of a Missouri corporation was that of receiving a subscription of stock from any city that would give it; provided two-thirds of its qualified voters assented. So that independent of anything contained in the act of March 12, 1870, (city charter) the ordinances 621 and 628, the registry of lawful voters, the election and subscription were all proceedings in strict conformity to law. The right to hold the election and make the subscription under the general railroad law of the State (Chapter 63, Code of 1865), is irrefragable.

But it is objected—

(1) That the city charter is a special law made for the city of Louisiana and lifts that city out of the General Statutes of the State, and therefore the General Statutes are not applicable to the city of Louisiana.

There is one sufficient answer to this, if no other, namely: that the city charter provides (Sec. 14, Art. vii.) that the city may subscribe for stock in any corporation under the charter, *or under any other Act of the General Assembly.* So that it was carefully provided that the power of the city to subscribe should not be confined to the special authority of the charter. It is to be observed that the Act of March 24, 1870, was passed only twelve days later than the city charter. Doubtless both Acts were pending before the Legislature at the same time. It is more than probable that the reference in Sec. 14, Art. vii, of the charter, was to the Act of March 24, 1870, giving all cities, town and counties authority to subscribe to foreign corporations seeking extension of their roads into Missouri. We are authorized to believe that the Act of March 24, 1870, was passed to relieve the people of the city of Louisiana from the embarrassment created by the unconstitutional clauses in the city charter. At all events the power was conferred, be the motive whatever it was.

(2) It is next objected that the Act of March 24, 1870, only authorizes the city to subscribe, but does not say the

railroad company may receive the subscription. If this objection could prevail, it would make the statute nugatory. The city could not subscribe when the railroad company could not receive the subscription. A denial of the power to receive is a denial of the power to make the subscription. The power to subscribe implies the power to receive the subscription.

10 Wis., 136, *Clark* vs. *Janesville.*

The authority of cities, towns and counties to subscribe to railroad companies is as old as the railroad system of Missouri.

Perhaps every railroad in the State has been aided by means of this authority. It was never suggested before this case, that the power to subscribe must be supplemented by any express power to receive. On the contrary, the authority conferred on cities, towns and counties has always been regarded as a privilege and franchise of the railroad corporations, a part and most valuable part of their charters.

54 Mo. 58, *Smith* vs *Clark County.*

54 Mo. 540, *State* vs *Greene County.*

When a subscription has been made and accepted by the railroad corporation, the contract has always been regarded complete.

1 Mo. Appeal R. 584, *Noyes* vs *People's Life Ins. Co.*

60 Mo. R. 249, *Lindell* vs *Ropes.*

It is objected that the subscription was void because the statute approved March 24, 1870, authorizing the extension of railroads into Missouri, required the foreign corporation so extending its road, before receiving a subscription to procure a vote of its stockholders assenting to such extension, and file a certificate thereof with the Secretary of State for the State of Missouri.

This objection proceeds from a careless reading of the statute, which requires such assent only from the stockholders of corporations of Missouri, but not from foreign corporations.

But if such assent of the stockholders of the Quincy, Alton & St. Louis Railroad was required, it would be too late for the city of Louisiana to raise the objection after contracting as it did, and after the extension of the road into the city according to the contract.

The city by contracting with the railroad company is estopped to deny compliance by the company of such a mere preliminary matter.

Ang. and Ames, Corporations, Sec. 80, 9th ed.
24th Ills., 46, *Tarbell* vs. *Page.*
26th Cal., 286, *D. M. Co.* vs. *Barrett.*
21st New York, 542, *Bank of Toledo* vs. *Int. Bank.*
35 Mo., 13, *O. & M. R. R.* vs. *McPherson.*
16 Mo., 359, *C. P. Road* vs. *Clemens.*
39 Mo., 157, *Smith* vs. *Heideker.*

Glover & Shepley

For pltff. in error.